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AN

HISTORICAL VIEW

OF THE

ENGLISH GOVERNMENT,

FROM THE

SETTLEMENT OF THE SAXONS IN BRITAIN

37087

TO

THE REVOLUTION IN 1688.

TO WHICH ARE SUBJOINED,

SOME DISSERTATIONS CONNECTED WITH THE HISTORY OF THE GOVERNMENT,

FROM THE REVOLUTION TO THE PRESENT TIME.

BY

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IN FOUR VOLUMES.

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TO THE

RIGHT HONOURABLE

CHARLES JAMES FOX.

SIR,

I SHALL, perhaps, be thought guilty of presumption, in wishing to draw your attention to the following publication. The truth is, it appears to me scarcely possible for any man to write a constitutional history of England, without having Mr. Fox almost constantly in his thoughts.

In delineating the progress of the English government, I have endeavoured to avoid those fond preposses-

sions which Englishmen are apt to entertain upon the subject, as well as the prejudices peculiar to the two great parties, which the nature of our limited monarchy has produced. How far I have succeeded in this, must be left to the judgment of the public. But, whatever indulgence may be shown to this work, the ambition of its author will not be gratified; unless he can procure, in some degree, the approbation of a mind superior to prejudice; equally capable of speculation, and of active exertion; no less conversant in elegant literature, than accustomed to animate the great scenes of national business; possessed of the penetration to discover the genuine principles of the constitution, and of the virtue to make them an invariable rule of conduct.

Impressed with the highest esteem for such a character, permit me to declare the satisfaction I feel from your steady perseverance in a system, which, by tending to secure the natural rights of mankind, has led to a reputation the most exalted, and the most grateful to a generous mind.

I have the honour to be,

SIR,

Your most obedient

Humble servant,

JOHN MILLAR.

College, Glasgow,
4th Dec. 1786.

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INTRODUCTION.

THE great series of events in the history of England may be divided into three parts: the first, extending from the settlement of the Saxons in Britain to the Norman conquest; the second, from the reign of William the Conqueror to the accession of the house of Stuart; the third, from the reign of James the First to the present time. The important changes exhibited in the state of the country, and in the situation of its inhabitants, appear, like a sort of natural boundaries, to mark out these different periods, and to recommend them as objects of distinct and separate examination.

The first period contains the conquest of England by the northern barbarians, the division of the country under the different chiefs by whom that people were conducted, the subsequent union of those principalities under one sovereign, and the course of public transactions under the Saxon and Danish monarchs.

The reign of William the Conqueror, while it put an end to the ancient line of kings, introduced into England a multitude of foreigners, who obtained extensive landed possessions, and spread with great rapidity the manners and customs of a nation more civilized and improved than the English. The inhabitants were thus excited to a quicker advancement in the common arts of life, at the same time that the nation, by acquiring continental connections, was involved in more extensive military operations.

By the union of the crowns of England and Scotland, upon the accession of the house of Stuart, the animosities and dissensions, with all their troublesome consequences, which had so long subsisted between the two countries, were effectually suppressed. By the improvement of manufactures, and the introduction of a considerable foreign trade, England began, in a short time, to establish her maritime power, and to assume a higher rank in the scale of Europe.

The same periods are also distinguished by remarkable variations in the form of government.

Upon the settlement of the Saxons in Britain, we behold a number of rude families, or tribes feebly united together, and little accustomed either to subordination among themselves, or to the authority of a monarch. During the reigns of the Anglo-Saxon princes, we discover the effects produced by the gradual acquisition of property; in consequence of which some individuals were advanced to the possession of great estates, and others, who had been less fortunate, were obliged to shelter themselves under the protection of their more opulent neighbours. Political power, the usual attendant of property, was thus gradually accumulated in the hands of a few great leaders, or nobles; and the government became more and more aristocratical.

When the advances of the country in improvement had opened a wider intercourse, and produced a more intimate union, between the different parts of the kingdom, the accumulated property in the hands of the king became the source of greater influence than the divided property possessed by the nobles. The prerogatives of the former, in a course of time, were therefore gradually augmented;

and the privileges of the latter suffered a proportionable diminution. From the reign of William the Conqueror in England, we may date the first exaltation of the crown, which, under his successors of the Plantagenet and Tudor families, continued to rise in splendor and authority.

About the commencement of the reign of James the First, great alterations began to appear in the political state of the nation. Commerce and manufactures, by diffusing a spirit of liberty among the great body of the people, by changing the system of national defence, and by increasing the necessary expences of government, gave rise to those disputes, which, after various turns of fortune, were at last happily terminated by the establishment of a popular government.

With reference to that distribution of property, in the early part of our history, which goes under the name of the feudal system, the constitution established in the first of these periods, may be called the *feudal aristocracy;* that in the second, the *feudal monarchy;* and that which took place in the third, may be called the *commercial government.*

Similar periods to those which have now been pointed out in the English history, may also be distinguished in the history of all those kingdoms on the continent of Europe, which were established upon the ruins of the Roman Empire, and in which the people have since become opulent and polished. Thus the reign of Hugh Capet in France, and of Otho the Great in Germany, correspond to that of William the Conqueror in England; as those of Lewis XIII. and Ferdinand II. in the two former countries, were analogous to that of James the First, in the latter.

In the following treatise, it is proposed to take a separate view of these periods of the English history, and to examine the chief differences of the political system in each of them. As the government which we enjoy at present has not been formed at once, but has grown to maturity in a course of ages, it is necessary, in order to have a full view of the circumstances from which it has proceeded, that we should survey with attention the successive changes through which it has passed. In a disquisition of this nature, it is hoped that, by considering events in the order in which they

happened, the causes of every change will be more easily unfolded, and may be pointed out with greater simplicity. As the subject, however, is of great extent, I shall endeavour to avoid prolixity, either from quoting authorities and adducing proofs in matters sufficiently evident, or from intermixing any detail of facts not intimately connected with the history of our constitution.

With respect to the Saxon period, which comes first in order, many writers appear to have looked upon it as too remote, and as affording a prospect too barren and rude, to deserve any particular examination. But it ought to be considered, that the foundations of our present constitution were laid in that early period; and that, without examining the principles upon which it is founded, we cannot form a just opinion concerning the nature of the superstructure. To trace the origin of a system so singular in its nature may, at the same time, be regarded as an object of rational curiosity. The British government is the only one in the annals of mankind that has aimed at the diffusion of liberty through a multitude of people, spread over a wide extent of terri-

tory. The ancient republics of Greece and Rome comprehended little more than the police of a single city; and in these a great proportion of the people, so far from being admitted to a share in the government, were, by the institution of domestic slavery, excluded from the common rights of men. The modern republics of Italy, not to mention the very unequal privileges which they bestow upon different individuals, are inconsiderable in their extent. The same observation is applicable to the government of the Swiss cantons. In the Seven United Provinces of the Netherlands, the government can hardly be considered as more extensive; for, notwithstanding the confederacy by which they are connected, every particular province, and even every single town of any consequence, belonging to each, having the exclusive power of making or consenting to its own regulations, forms in reality an independent political system. By what fortunate concurrence of events has a more extensive plan of civil freedom been established in this island? Was it by accident, or by design, or from the influence of peculiar situation, that our Saxon forefathers,

originally distinguished as the most ferocious of all those barbarians who invaded the Roman provinces, have been enabled to embrace more comprehensive notions of liberty, and to sow the seeds of those political institutions which have been productive of such prosperity and happiness to a great and populous empire? To these questions it is hoped that, in the sequel, a satisfactory answer will be given.

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HISTORICAL VIEW

OF THE

ENGLISH GOVERNMENT,

BOOK I.

OF THE ENGLISH GOVERNMENT, FROM THE SETTLEMENT OF THE SAXONS IN BRITAIN TO THE REIGN OF WILLIAM THE CONQUEROR.

CHAPTER I.

Preliminary Account of the State of Britain under the Dominion of the Romans.

THE downfal of the Roman state, and the formation of those kingdoms which were built upon the ruins of it, may be regarded as one of the greatest revolutions in the history of mankind. A vast unwieldy empire, which had for ages languished under a gloomy despotism, was then broken into a number of independent states, animated with all the

vigour, but subjected to all the violence and disorder, natural to a rising and unsettled constitution. The arts and literature which had grown up in the ancient world were, in a great measure, overthrown; and a new system of political institutions, together with a total change of manners, customs, and ways of thinking, spread itself over the greatest part of Europe.

The plan of government, which the Romans adopted throughout the greatest part of their dominions, was uniform and simple. After that people had enlarged their city, as far as was convenient, by incorporating some of the neighbouring tribes, and had joined to it the possession of a considerable adjacent territory, they divided their future acquisitions into distinct provinces; in each of which they placed a governor, invested with almost unlimited authority. It cannot escape observation, that the Roman patriotism, even in the boasted times of the commonwealth, was far from being directed by a liberal spirit: it proceeded from narrow and partial considerations; and the same people who discovered so much fortitude and zeal in establishing and maintaining

the freedom of their capital, made no scruple in subjecting the rest of their dominions to an arbitrary and despotical government. The governor of every province had usually the command of the forces; and was invested with the supreme executive and judicial powers, together with the privilege of appointing the greatest part of the inferior officers, to whom the distribution of justice, or the care of the police, was intrusted. The oppressive taxes to which the inhabitants of the provinces were subjected, and the still greater oppression which they suffered from the arbitrary and illegal exactions of their magistrates are sufficiently known. The tribunals of Rome were at too great a distance to take a strict account of her provincial officers; and the leading men in the Republic, who expected, in their turns, to enrich themselves by the plunder of the provinces, were seldom disposed to enter very heartily into measures for restraining such enormities. The riches amassed by the offender afforded him, at the same time, the means of preventing any troublesome inquiry into his behaviour; and in proportion to the extent of his guilt, was commonly the degree of security which

he afterwards enjoyed. Cicero affirms, that in the small government of Cilicia, after saving to the public the amount of a full million sterling, which the former governors had applied to their private use, he had, at the end of the year, about twenty thousand pounds of clear gain.

But while Rome was thus extending conquest and slavery over the world, she communicated to the conquered nations her knowledge, and her refinements in the arts of life. The great military establishment maintained in every province, in order to keep the inhabitants in subjection; the large body of civil officers necessary in the various departments of public administration; the numerous colonies, composed of Roman citizens, who settled in every part of the empire, and carried along with them the Roman institutions and customs; and, above all, the frequent resort of the chief provincial inhabitants to the capital of the empire, a natural consequence of their dependence; these circumstances produced an universal imitation of Roman manners, and throughout the dominions of Rome contributed to spread her language, arts, and literature.

These advantages compensated in some measure, and were sometimes more than sufficient to counterbalance, the loss of independence. Wherever the Roman dominion was established, the ruder parts of the world were civilized.

Among all the countries subdued by the Romans, none was in a more uncultivated state than Britain; and it is probable that no country derived greater advantages from her subjection. A great part of the inhabitants, before they were incorporated in the Roman empire, seem to have been strangers to agriculture, and to have been maintained chiefly by their herds of cattle. They were divided into small independent tribes, under their several chiefs, as commonly happens in that early state of mankind; and these little societies being much addicted to plunder, and for that reason frequently engaged in hostilities, a regard to mutual defence had occasionally produced alliances among some of them, from which a variety of petty princes, or kings, had arisen in different parts of the country.

The Roman administration of Britain does not appear to have been distinguished from

that of the other provinces at a distance from the seat of government. After the reduction of all that part of the island accounted worth the trouble of acquiring, the first great object was, to ascertain and preserve the conquest by a permament military force. For this purpose the inhabitants were completely disarmed; and a standing army, composed, according to the lowest account, of three legions, amounting to upwards of thirty-six thousand foot and six thousand horse, was introduced, and regularly maintained*. These troops were distributed over the province, and placed in stations where their service could be most useful, either by overawing the natives, or by repelling the invasions of the unconquered tribes in the North. When not engaged in war, they were employed, according to the usual practice of the Romans, in public works; in building and repairing these two northern walls, which at different times were intended as the boundary of the province; in constructing forts; in clearing the country of its forests

* Horsely Brit. Rom. Whitaker Hist. Manchester, v. i. b. i. ch. 6.

and marshes; and in opening a communication between different parts of it, by an uninterrupted chain of high roads.

There are said to have been, in the whole province, about a hundred and fifty Roman stations; which were connected with inferior fortresses, erected at convenient distances, and garrisoned with regular troops*. Each of these garrisons occasioned a resort of the neighbouring inhabitants, and probably gave rise to a sort of village or town, in which a promiscuous settlement was formed by Roman families and those of the natives. The effect of such an intercourse in the communication of manners and customs, may easily be conceived. In particular, as the military people were often rewarded by the public with landed possessions, their example could not fail to spread the knowledge and practice of agriculture, while their industry in the management of their estates contributed to beautify and improve the face of the country.

The connexion with Britain, which the soldiers of the British army acquired by living

* Whitaker Hist. Manchester, v. i. b. i. ch. 8.

in the country, was even seldom broke off when they were dismissed from the service. Though drawn originally from different parts of the empire, yet, having formed an attachment to the place in which they had so long resided, they were commonly disposed, in their old age, and when they had merited their dismission, to pass the remainder of their days in the province. The offspring of these people became natural inhabitants: and Britain, in this manner was continually receiving fresh supplies of Romans, who compensated for such of the natives as, in the course of recruiting the armies, were naturalized into other provinces.

After establishing a sufficient military force to maintain her authority, the attention of Rome was directed to the suppression of internal disorder among her subjects, by the regular distribution of justice. The jealousy entertained by the first emperors had suggested an important regulation for limiting the dangerous power of their provincial governors. From the time of Augustus, the provinces near the seat of the empire, as they enjoyed the prospect of tranquillity, were distinguished from such as were situated at a distance, and

on that account more exposed to disturbance. In the former, the governor was merely a civil officer, and had no direction of the forces; but in the latter, it was thought necessary that his authority should be rendered more effectual, by raising him to the head of the military, as well as the civil department*.

The president or governor of Britain was in the latter situation; having the command of the army, together with the supreme jurisdiction, and the appointment of inferior magistrates. In the courts held by all these officers, the laws of Rome were considered as the standard of every decision. Wherever the Romans extended their dominion, it was their constant aim to introduce their own jurisprudence; a system which was calculated to establish good order and tranquillity among the conquered people, as well as to promote the interest of the conquerors. The introduction of that system into Britain was more immediately necessary, to prevent those private wars, and to restrain those acts of violence and injustice, to which the inhabitants were so much

* Dio. Cass. 53.—Hein. ad. lib. i. dig. tit. 16. 18.

addicted. It is not likely, however, that an innovation of such importance was accomplished all at once. In the public administration of the province, the Roman magistrates assumed an absolute authority; but, in matters of private property, the British chiefs and petty princes appear, for some time after the conquest, to have retained their ancient jurisdiction, and to have determined the differences of their own tenants and dependants. But this jurisdiction became gradually more circumscribed, and seems at last to have been entirely annihilated. The continual migration of foreigners into the province, brought along with them the fashions acquired in other parts of the empire; while the multiplication and enlargement of the British towns, which, for the most part, were governed according to the policy of Rome, extended the influence of the Roman judges. The province of Britain is said to have contained about an hundred and forty towns, nine of which were of the rank of colonies; and the customs, as well as the notions of order and justice, which prevailed in those places of common resort, were easily propagated over the surrounding country. The

long continuance of the provincial government, and the progress of the natives in civilization, disposed them to neglect their original magistrates, and to court the favour of the ruling powers, by an immediate appeal to their protection.

To procure a revenue, not only sufficient for defraying the expences of the civil and military establishments, but also capable of affording annual remittances to the emperor, was a third, and perhaps the principal object of his administration. The Britons were subjected to taxes of the same nature with those which were levied from the other provinces*. The proprietors of arable land paid an annual quit-rent, supposed to be equal to a tenth part of the fruits; and the possessors of pasture ground were also loaded with a duty, proportioned to the number of their cattle†. The customs and excise, in this part of the Roman dominions, are said to have been remarkably heavy‡; but the impositions which excited

* See an account of the taxes throughout the Roman dominions, in Burman. de Vect. Rom.

† This tax upon cattle was called *Scriptura*.

‡ Strabo, lib. iv.

most complaint were, a poll-tax, and a duty upon funerals. These being levied at a fixed rate, without any regard to the poverty or riches of the people, and having no immediate dependence on the prosperity of trade and manufactures, were most easily increased at pleasure, and therefore seem to have been the usual expedients for raising supplies, when every other taxation had been found ineffectual *.

The charge of collecting the revenue was committed to an *imperial procurator*, who had the superintendance of all the inferior officers employed in this branch of administration; and in Britain, as well as in the other provinces, the principal taxes were let to farmers for the payment of a yearly rent. From this mode of collection, so liable to abuse, and from the nature of the government in other respects, it may seem unnecessary to remark, that the Britons were exposed to grievous extortions. If the countries near the seat of the empire, and within the observation of the sovereign, were abandoned to the arbitrary measures of the

* See the terms in which Boadicea is made to complain of the two last-mentioned taxes. Xiphilinus in Nerone.

provincial officers, it cannot be supposed that those at a distance were in a better situation. Tacitus mentions, in terms of the highest indignation, the unfeeling rapacity of the Roman officers in Britain; which, at an early period, excited a general revolt of the inhabitants*.

It is well known, that the cities and provinces under the Roman dominion were often reduced, by the demands of government, to such distress, as obliged them to borrow money at exorbitant interest: and that, by taking advantage of their necessities, the monied men of those times were enabled to employ their fortunes in a very profitable manner. In this trade, though prohibited by law, and however infamous in its own nature, the best citizens of Rome (such is the force of example) were not ashamed to engage. Seneca the philosopher, whose philosophy, it seems, was not incompatible with the love of money, lent the Britons, at one time, above three hundred and twenty-two thousand pounds †.

* Tacit. Agric. ch. 15.

† Χιλιας μυριαδας, quadrigenties sestertium; viz. £322,916. 13. 4. Xiphilinus in Nerone.

Were it possible to ascertain the extent of the revenue drawn from the province of Britain, we might thence be enabled to form a notion of the opulence and improvement attained by the inhabitants. Dr. Henry, who has made a very full collection of the facts mentioned by ancient authors concerning the provincial government of this Island, supposes that its annual revenue amounted to no less than two millions sterling*. But this is a mere conjecture, unsupported by any authority; and it should seem that no accounts

* This supposition is built upon a calculation of Lipsius, who makes the revenue of Gaul amount to £2,421,875. This calculation is only supported by a passage of Cicero, quoted by Strabo, which mentions the revenue of Egypt, in the time of Auletes, the father of Cleopatra, as amounting to that sum; and by a passage in Velleius Paterculus, asserting that Egypt in taxes yielded *nearly as much as Gaul*. But the evidence arising from this is too slight, when opposed to the authority of Suetonius, and that of Eutropius; who say, that Cæsar drew from Gaul only *quadringentics*, £322,916. 13. 4. Supposing, however, the fact to be ascertained, that the revenue of Gaul was about two millions and a half, is there sufficient ground to infer from this that the revenue of Britain was, at least, two millions? —Lipsius de Magn. Rom.—Henry's Hist. v. i.

have been transmitted by historians, from which the point can be determined.

The improvements made by the Britons in agriculture were such, as to produce a regular exportation of corn, for supplying the armies in other parts of the empire. Their houses were built in the same style of architecture; and many of them were adorned with statues and public structures, in the same taste of magnificence which prevailed in Italy. In this branch of labour, their mechanics were even so numerous, and had such reputation, as to be employed upon the neighbouring continent. In weaving cloth they appear also to have made considerable proficiency. We are informed, in particular, that linen and woollen manufactures were established at Winchester*.

The foreign trade of Britain, arising from her valuable tin mines, and for which the island was, at a very remote period, frequented by the Phenicians, and other commercial nations of antiquity, is universally known. When this branch of commerce, together with those of

* Henry's Hist. v. i.

lead, wool, hides, and some other native productions, came to be secured of a regular market, under the eye and protection of the Roman magistrate, they were undoubtedly pushed to a considerable extent.

In taste and literature, the advances made by the Britons were no less conspicuous than in the common improvements of life. Even in the time of Agricola, "the youth of distinguished families," according to the great historian of that age, "were instructed in the "liberal arts: insomuch that those who but "lately were ignorant of the language, began "to acquire a relish for the eloquence of "Rome. They became fond of appearing in "the dress of the Romans, and by degrees "were led to imitate their vices, their luxury, "and effeminacy, as well as their elegance "and magnificence*."

The fashion of travelling for education, and of residing in Rome, and in other learned and polite cities of the empire, was early introduced among the Britons; who, in a noted passage of Juvenal, are mentioned as being indebted

* Tacit. Agric. c. 21.

to the Gauls for their eminent proficiency in pleading at the bar*. In Britain, as well as in other provinces, the utmost attention was given by government, to propagate the knowledge not only of the Latin and Greek languages, but of all those branches of science that enjoyed any reputation; and for this purpose, academies and schools, with public encouragement, are said to have been erected in the principal towns. From these different sources the Roman learning, in all its parts, was communicated to this Island; where it flourished for some time, and was afterward subjected to a similar decay as in all the other provinces of the empire.

The successive changes which happened in the political situation of the Roman empire produced alterations in the administration of all the provinces, as well as of Britain in particular. The despotical government of Rome, as it had been at first established, so it was afterwards entirely supported by a military force. In its original, therefore, it contained

* Gallia causidicos docuit facunda Britannos.—Juv. Sat. 15.

the seeds of its destruction. As, by his tyrannical behaviour, the reigning emperor became naturally the object of detestation and resentment to his subjects, he was exposed to the continual hazard of insurrection, from the disgust or caprice of that army which he kept on foot for maintaining his authority. It was, at the same time, impossible that he should command in person the different armies necessary for the defence of the whole empire, or that he should prevent the general of every separate army from acquiring influence and popularity with the troops under his direction. The greatest and most veteran of those armies were unavoidably employed on the frontiers, where their service was most needed, and where their courage and activity were most exercised; and their leaders being too far removed from the chief magistrate to meet with any disturbance in forming their ambitious plans, were frequently in a condition to render themselves independent, or to open a direct passage to the throne.

But the independence of the opulent and leading men, in the distant provinces, was increased by another circumstance of still greater

importance. The first emperors, who possessed the extensive and rich countries lately subdued by the Roman arms, enjoyed an immense revenue, and their influence must have been proportionably great; but the oppressive nature of their government, and the unbounded licence which they gave to the plunder of their subjects, could not fail to discourage industry, and of course to reduce the people to poverty and beggary. The extent of the Roman empire had, in the mean time, become so great, that the expence of maintaining forces on a distant frontier, with a view of making any farther conquest, seemed to overbalance the advantages which it might be supposed to produce. Adrian, a prince no less distinguished for activity than wisdom, was induced to contract his dominions, and to abandon a part of what had been already acquired, that he might be able to preserve the remainder in greater security. Thus, while the old channels of public revenue were drained, no new sources could be provided to supply the deficiency. In this situation the emperor felt a gradual decline of his authority; and as he became less able to protect the inhabitants of the provinces,

or to punish their disobedience, they were more disposed to shake off their allegiance, and emboldened to follow the fortunes of any adventurer who found himself in a condition to disturb the public tranquillity.

For preventing these disorders, it was thought a prudent measure to associate different leaders in the supreme power. The first traces of this practice may be discovered about the time of Trajan and the Antonines; who partly, as it should seem, from affection, and partly from political motives, adopted in their own life-time *a Cæsar*, or successor to the crown. The same plan was farther extended by Diocletian; who divided the sovereignty between two emperors and two Cæsars; and who seems to have thought that, to preserve the empire from falling in pieces, it was requisite to submit to the manifest inconveniences arising from the jealousy and bad agreement of so many independent heads. The emperor Constantine rendered this division more permanent, by erecting a great Eastern capital, which became the rival, and even superior, in opulence and dignity, to that of the west.

In conformity to such views of dividing the sovereignty among those leaders who might otherwise be disposed to tear the empire asunder, subdivisions were made in those territories which had formerly composed a single province; and in each subdivision a chief officer was appointed, whose authority might serve to limit and circumscribe that of him who had the government of the whole. Thus the same prince who founded Constantinople, having disbanded the whole prætorian guards, whose power had long been so formidable, distributed the whole empire into four great *præfectures*, corresponding to the four joint sovereigns already established. Each præfecture he divided into certain large territories, called *jurisdictions*, under their several governors; and each jurisdiction he parcelled out into smaller districts, under the denomination of *provinces*, which were committed to the care of deputy-governors.

Britain, which originally formed a single province, but which, by the emperor Severus, had been divided into two, was, according to this arrangement, multiplied into five provinces; and the *vicar* or governor of the whole,

enjoyed a paramount authority to that of its five deputy-governors.

The direction of the civil, and that of the military establishment, were, for the same reason, separated, and placed in different hands. After the dismission of the prætorian guard, and of its commander, two military officers were appointed, the one of which had the command of the infantry, and the other of the cavalry, throughout the empire; and under them the number of generals, in particular districts, appears to have been considerably increased. The Roman forces in this Island came, in the later periods of its provincial government, to be under the direction of three independent officers; the *duke of Britain*, who commanded on the northern frontier; the *count of Britain*, who conducted the troops in the interior parts of the country; and the *count of the Saxon shore*, employed in superintending the defence of the southern and eastern coasts, which, from about the beginning of the third century, had been exposed to frequent incursions from the Saxons.

All these precautions, however, by which the Roman emperors endeavoured to maintain

subordination and dependance in the different parts of their dominions, were ineffectual in opposition to the prevailing current of the times. The same unhappy system which tended to loosen the bands of government, contributed also to render the military establishment unfit for defence against a foreign enemy. As all power and distinction were ultimately derived from the army, it was the interest of every general to court the favour of the troops under his command, not only by enriching them with donations and emoluments, but by treating them with every kind of indulgence. The natural consequence of such a situation was the procuring to the soldiers an exemption from the laborious duties of their profession. Feeling their own consequence, the military people set no bounds to their licentious demands, and were rendered inactive and effeminate, in the same proportion as they became haughty and insolent. The heavy armour, which in former times had been used with so much advantage, was therefore laid aside, as too cumbersome and fatiguing; and the ancient military discipline, the great cause of all their victories, was at length entirely neglected.

It was thus that the Romans, being deprived of that superiority which they had formerly possessed, in their encounters with rude and ignorant nations, found themselves unable to resist the fierce courage of those neighbouring barbarians, who, about the fifth century, were invited to attack them by the prospect of plunder and of new settlements.

In this declining state of the Roman empire, the revenue of the provinces, by suffering a gradual diminution, became at length insufficient for the support of their civil and military establishments; and whenever any country had been reduced to such a degree of poverty as to be no longer able to repay the trouble and expence of maintaining it, good policy seemed to require that it should be abandoned. To such an unfruitful condition the distant provinces, and Britain more especially, appear to have been fast approaching, in the reign of Arcadius and Honorius, when a deluge of barbarians, pressing on all sides, threatened the state with sudden destruction, and made it necessary to withdraw the forces from this Island, in order to defend the richer and more important parts of the empire.

The situation of Britain, when thus deserted by the Romans, was no less new and singular, than it was alarming and unhappy. When mankind are formed into political societies, and have acquired property, they are usually provided with one set of regulations for repelling the attacks of their enemies, and with another for securing internal tranquillity. But the Britons, upon this extraordinary emergency, were left equally destitute of both. From the distrustful jealousy of Rome, they had been removed from all concern in military transactions, at least in their own country, and made to depend for their safety upon an army composed entirely of foreigners. In such a state they had remained for more than three centuries, enjoying the protection of their masters, without any call to exert themselves in their own defence, and cultivating those arts which tend to soften the manners, while they inspire an aversion from the dangers and hardships of a martial life. Thus the Britons, in their advances towards civility, lost the courage and ferocity of barbarians, without acquiring the skill and address of a polished nation; and they ceased to be warriors by

nature, without being rendered soldiers by discipline and education.

But the departure of the Romans from Britain was no less fatal to all the institutions of civil government. The governors and other officers, who directed the administration of public affairs, the farmers engaged in the different departments of the revenue, the magistrates of Roman appointment, who determined both civil and criminal causes, and who had now acquired a complete jurisdiction over the whole province, had no longer occasion to remain in a country which was totally abandoned by its master, and in which, by the removal of the army, they had lost the means of maintaining their authority. The courts of justice, therefore, were dissolved; the taxes were abolished; and all order and subordination were destroyed. Even private individuals, of Roman extraction, who had acquired estates in Britain, endeavoured to dispose of their fortunes; and by leaving the Island, avoided the storm that appeared to be gathering around them.

The disasters which followed were of such a nature as might be expected from the anar-

chy and confusion which prevailed in the country. The Scots and Picts, who, in the northern part of the Island, had remained unconquered, and retained their primitive barbarous manners, took advantage of this favourable opportunity, to invade and plunder their more opulent neighbours. They met with little resistance from the Britons, who, giving way to their fears, and conscious of their inferiority, seemed to place their only refuge in the protection of their ancient rulers. The abject manner in which they, at different times, solicited that protection; the behaviour of their ambassadors, who in the presence of the emperor rent their garments, and putting ashes upon their heads, endeavoured to excite commiseration by tears and lamentations; the letter which they wrote to Ætius, the præfect of Gaul, inscribed *the groans of the Britons*, and in which they say, *the barbarians drive us into the sea, the sea throws us back upon the barbarians, and we have only the hard choice left us, of perishing by the sword, or by the waves*; these particulars, which are handed down by historians, exhibit the shocking picture of a people totally destitute of spirit, and unable to col-

lect resolution even from despair. Upon two occasions they obtained from Rome the aid of a military force, by which their enemies were surprised, and repulsed with great slaughter; but the relief which this afforded was merely temporary, and they received a peremptory declaration, that, from the embarrassed condition of the empire, no future supplies of this kind could be spared*.

The consternation of the Britons, in this helpless condition, may easily be conceived, though in the rude annals of that period it is, perhaps, painted with some degree of exaggeration. Time and necessity, however, suggested the means of guarding against the evils to which they were exposed. The proprietors of land possessed a natural influence over the people whom they maintained upon their estates; and this was the source of a jurisdiction, which, during the subsistence of the Roman dominion, had been in great measure extinguished, but which, upon the dissolution of the Roman courts, was of course revived and rendered independent. The same influ-

* Gildæ Hist.—Bedæ Hist. Eccles.

ence enabled these persons to call out their tenants to war, and to assume the direction of their conduct during a military enterprize. By these two branches of authority, a very simple form of government was gradually introduced. The whole country was broken into separate districts, according to the extent of territory in the possession of individuals; and fell under the civil and military power of so many chiefs, the most opulent of whom appear to have been dignified with the title of princes. By the efforts of these leaders, it is likely that private robbery and violence were, in some degree, restrained, and the people were encouraged to return to their tillage and ordinary employments, from the neglect of which, it is said, a famine had been produced. But their great object was to oppose the northern invaders. For this puprose they elected a general of their united forces, upon whom, after the example of the Romans, they bestowed the appellation of the *duke of Britain.* The same person presided in the assemblies held by the chiefs, in which the great affairs of the nation appear to have been determined.

After the government had remained for

some time in this channel, Voltigern, one of the most opulent of their princes, was promoted to that high dignity; and upon a new alarm of an invasion from the Scots and Picts, he is said to have called a national council, in which it was agreed to solicit the assistance of the Saxons. As this measure was fatal in its consequences, it has been universally decried, and stigmatised as the height of imprudence; but we ought to consider that it proceeded from the same system of policy which has been practised and approved in all ages, that of courting the alliance of one nation, in order to form a balance against the formidable power of another; and the censures which, in this instance, have been so liberally bestowed upon the Britons, are a plain proof how ready we are to judge of actions from the good or bad success which attends them, or how difficult it is to establish any general rules of conduct, that will not appear grossly defective in a multitude of the particular cases to which they may be applied.

CHAPTER II.

Character and Manners of the Saxons.

OF those barbarians who passed under the denomination of Saxons, and who, at the time when they were invited to assist the Britons, inhabited the northern parts of Germany, it is of little moment to ascertain the origin, or to trace the several places in which they had previously resided. The Germans, who subdued the western provinces of the Roman empire, have been supposed to possess a singular character among the rude inhabitants of the world, and to be distinguished by their eminent qualities and virtues. Such an opinion may be ascribed to the elegant description of that people by the masterly pen of Tacitus; to the great revolutions which they achieved in Europe; and, above all, to that national vanity which is more extravagant than the vanity of individuals, because the multitude of persons who are influenced by the same weakness keep one another in countenance. But there is reason to believe that the ancient inhabitants of Germany exhibited the same

dispositions and manners, and adopted similar institutions and customs, to those which may be discovered in such barbarians, of every age or country, as have been placed in similar circumstances.

Deriving their chief subsistence from the pasturing of cattle, they generally possessed considerable wealth in herds and flocks; but as they were little acquainted with tillage, they seem to have had no idea of property in land. Like the early nations described in the Sacred History, they were accustomed frequently to change their abode. Regarding chiefly the interest of their cattle, they often found it convenient to wander from one place to another, according as they were invited by the prospect of new pastures; and in their migrations, they were under no restraint, either from the cares of husbandry, or from the nature of their possessions.

But while the management of their cattle constituted the ordinary employment of these people, they were also frequently engaged in war. In common with all other barbarous nations, they were much addicted to theft and rapine. The right of property must be long

established, before the violations of it can be regarded as heinous offences; and it is necessary that men should be habituated to an extensive intercourse of society, before they are presented with sufficient inducements to sacrifice the immediate profits of fraud and violence, to the distant but superior advantages, derived from their living together upon good terms, and maintaining an amicable correspondence. The ancient Germans inhabiting a country almost entirely overgrown with wood, or covered with marshes, were often reduced to great scarcity of provisions; and were therefore strongly instigated, by hunger and misery, to prey upon one another. Example, in such a case, found no difficulty to excuse or vindicate what custom had rendered universal.

The rude inhabitants of the earth appear, in all ages and countries, to have been divided into separate tribes and villages; a consequence of their hostile dispositions. When, from accidental circumstances, a family of such people had been planted, at so great a distance from their friends and acquaintance as to prevent all correspondence with them, its members, from inclination, as well as from a re-

gard to mutual defence, were usually disposed to live together, and to avoid much intercourse with neighbours by whom they were likely to be treated as enemies. If their multiplication rendered them too numerous to be all maintained under the same roof, they naturally subdivided themselves into different families, who erected their huts beside one another; and if at length their village had been so enlarged as to produce a difficulty in finding subsistence, they were led, by degrees, to remove that inconvenience, by sending out little colonies, with which, notwithstanding their distance, they frequently preserved an alliance and connection. The German tribes became larger and more extensive, according as, by the increase of their cattle, they were enabled to live in greater affluence. In that part of Germany which was known to the Romans, there have been enumerated about forty different tribes or nations, many of which appear to have enjoyed considerable opulence and power. But concerning the number or extent of the villages belonging to each of these, little or no account can be given.

The political regulations established among

the ancient Germans were few and simple, and such as their situation could hardly fail to suggest. Every society, whether great or small, that had occasion to act in a separate military capacity, required a separate leader: for which reason, as every family was under the direction of the father, so every village had its own chief; and at the head of the whole tribe or nation there was a great chief or king. How far the king, or the inferior chiefs, enjoyed their dignity by election, or by hereditary descent; it may be difficult to determine; but their authority was far from being absolute. It was the business of every chief to compose the differences, and, probably, to command the forces, of that village over which he presided. The king too seems to have acted with their advice in the ordinary administration of public affairs; but in matters of great moment, such as the making of laws, or the trial of capital offences, he was obliged to procure the concurrence of a great council, composed of all the heads of families*.

* "In pace, nullus est communis magistratus; sed prin-
"cipes regionum atque pagorum inter suos jus dicunt, con-
"troversiasque minuunt. Ubi quis ex principibus in con-

The general character of these barbarians was such as might be expected from their manner of life. It consisted not of many features, but they were distinctly and strongly marked. As in the carnivorus brute animals, obliged very often to fight for their food, and exposed to continual strife and contention in the pursuit of mere necessaries, their passions,

" cilio dixit se ducem fore—qui sequi velint profiteantur; " consurgunt ii qui et causam et hominem probant, suum- " que auxilium pollicentur, atque ab multitudine conlau- " dantur: qui ex iis secuti non sunt, in desertorum ac prodi- " torum numero ducuntur, omniumque iis rerum postea " fides derogatur." Cæsar de Bel. Gal. 6. § 23.——" Re- " ges ex nobilitate, duces ex virtute sumunt. Nec regibus " infinita aut libera potestas; et duces exemplo potius quam " imperio, si prompti, si conspicui, si ante aciem agunt, ad- " miratione præsunt."——" De minoribus rebus principes " consultant, de majoribus omnes: ita tamen, ut ea quoque, " quorum penes plebem arbitrium est, apud principes per- " tractentur."——" Ut turbæ placuit, considunt armati. " Silentium per sacerdotes, quibus tum et coercendi jus est, " imperatur. Mox rex, vel principes, prout ætas cuique, " prout nobilitas, prout decus bellorum prout facundia est, " audiuntur, auctoritate suadendi magis quam jubendi po- " testate."——" Licet apud concilium accusare quoque, et " discrimen capitis intendere."——" Eliguntur in iisdem " conciliis et principes, qui jura per pagos vicosque red- " dunt."——Tacit. de Mor. German. c. 7. 11. 12.

though excited by few objects, were strong and violent. Their situation, at the same time, occasioned a wonderful similarity in the dispositions and habits of individuals. In every polished nation, the labour and application of the people is usually so divided, as to produce an endless variety of characters in those who follow different trades and professions. The soldier, the clergyman, the lawyer, the physician, the taylor, the farmer, the smith, the shopkeeper; all those who earn a livelihood by the exercise of separate employments, whether liberal or mechanical, are led, by the different objects in which they are conversant, to contract something peculiar in their behaviour and turn of thinking. But the ancient inhabitants of Germany had made too little progress in arts, to require that a single person should bestow his whole attention upon any one branch of labour, in order to acquire the usual degree of skill and proficiency in it. Every man therefore was accustomed to exercise indiscriminately the few employments with which they were acquainted. Every family built its own cottage, fashioned its own tools and utensils, managed its own cattle, and took precautions for its own

support and defence. Thus the whole people, being employed nearly in the same manner, and having no pursuits but such as were suggested by their most immediate wants, were trained up in an uniform sort of discipline, and acquired that uniformity of manners and customs, which is commonly observed in persons of the same trade or profession. Even the nations inhabiting the most distant regions of that extensive country appear to have been no otherwise discriminated than by the different shades of barbarism and ferocity which the climate or situation, more or less favourable to improvement, might easily be supposed to produce.

Among people who are constantly exposed to the attacks of their neighbours, and who are almost continually employed in war, courage and other military qualities are naturally intitled to hold the first rank. There is an *active* and a *passive* courage, which may be distinguished from each other, as they seem to depend upon different principles, and are not always to be found in the same persons. The former is displayed in the voluntary encountering of danger, the latter in bearing pain and

distress with firmness and constancy. Valour, which demands a sudden and violent effort of resolution, may be regarded as a masculine quality; while fortitude, which, in many cases, is the fruit of calmer but more continued exertion, is often conspicuous in the weaker sex. In order that, with our eyes open, we may expose our lives to imminent danger, we must be excited by a strong desire of procuring esteem and applause, either from others, or from the reflection of our own minds. Efforts of this kind, it is evident, are most likely to be made in those countries where, from long practice, and frequent emulation in fighting, martial exploits have come to be universally admired, and looked upon by every one as the infallible road to honour and distinction. Fortitude under pain and distress may, on the contrary, be promoted by the opposite circumstances, by the want of sensibility, or by a conviction that our sufferings are beheld with unconcern and indifference. To complain or repine, in the midst of affliction, is an attempt to procure relief, or at least compassion, from others; and when we find that our complaints are disregarded, or treated with scorn and deri-

sion, we are led to exert our utmost resolution in order to smother and restrain them.

The savages, who live by hunting and fishing, are placed in a situation more favourable to fortitude than to valour. Exposed by their manner of life to innumerable hardships and calamities, they are too much loaded by the pressure of their own wants and sufferings, to feel very sensibly those of their neighbours. They disdain, therefore, to solicit that sympathy, which they know by experience will not be afforded them; and having, from their daily occurrences, been long inured to pain, they learn to bear it with astonishing firmness, and even to endure every species of torture without complaining. As, on the other hand, they live in very small societies, and, in order to find subsistence, are obliged to remove their different villages to a great distance from one another, they are not apt to be engaged in frequent or extensive military enterprizes, nor to attain any degree of refinement in the methods of conducting their hostilities. The punctilios of military honour are unknown to them. They scruple not to take any unfair advantage in fighting, and can seldom be

brought to expose themselves in the open field. The unrelenting and blood-thirsty Indian of America is accustomed to lie concealed for weeks, that he may have a convenient opportunity of shooting his enemy, and may then with safety enter his cabin, to rob and murder the family.

Nations who subsist by pasturing cattle, as they live in larger societies, and are supplied with food in greater abundance, are more at leisure, and have greater incitements to cultivate their social dispositions. But their magnanimity, in bearing pain and affliction with apparent unconcern, is naturally diminished by their advancement in humanity; and according as individuals discover that their distresses meet with greater attention from their companions and acquaintance, they are more encouraged to display their sufferings, and to seek the tender consolation of pity, by giving way to the expression of sorrow and uneasiness. They are also likely to acquire a much higher degree of the military spirit. The wandering life of shepherds is the occasion of bringing frequently into the same neighbourhood a variety of stranger tribes; among whom any

accidental jealousy, or interference of interest, is apt to kindle animosity, and to produce quarrels and hostilities. In the frequent wars that arise from such a situation, and which are carried on with the ardour and ferocity natural to barbarians, the victors, having no fixed residence, are at full liberty to prosecute their success without interruption; and as, in every migration, such people are obliged to carry along with them their wives, and children, and servants, together with their herds and flocks, and even their furniture and utensils, a decisive battle never fails to reduce one tribe completely under the power of another. With the same ease with which the conquerors may pursue their victory, they can incorporate with themselves the vanquished party, and make use of their assistance in any future enterprize. Thus by repeated successes, and by a gradual accumulation of forces, a single tribe may, in a short time, become so powerful, as to meet with no enemy in a condition to cope with them, and be excited with great rapidity to overrun and subdue a vast extent of country. History is accordingly filled with the rapid and extensive conquests made by nations in

this early state of society; of which, in particular, there occur many celebrated examples among the Arabs and Tartars.

Such was the condition of the ancient Germans; of whom it is remarked by the historian, that they were less distinguished by their patience of labour, or by their capacity to bear the extremities of heat and cold, of hunger and of thirst, than by their active courage, and their ardent love of military reputation*. "They "are more easily persuaded," says Tacitus, "to march against an enemy, and to expose "themselves in the field, than to plough the "earth, and to wait the returns of the sea-"son. They account it tamely to acquire "with sweat what may be procured with "blood. When they engage in battle, it is a "disgrace for the chief to be surpassed in va-"lour; it is a disgrace for his followers not to "equal the bravery of their chief; it is perpe-"tual infamy to escape with safety, after the "fall of their leader. To defend and protect "his person, to devolve upon him the glory

* Laboris atque operum non eadem patientia; minimeque sitim æstumque tolerare, frigora atque inediam cœlo solove assueverunt. Tacit. de Mor. German. c. 4.

"of all their brave actions, is the principal "point of honour. The chiefs fight for vic- "tory, their followers for the reputation and "dignity of the chief*."

The same circumstances which gave rise to frequent hostilities between the members of different tribes, produced a strong attachment between the individuals belonging to each of those little societies. United by a sense of their common danger, and by their common animosity, against all their neighbours, they were frequently required by their situation to defend and relieve one another, and even to hazard their lives for their mutual safety. Living in a small circle of acquaintance, and having scarcely any intercourse with the rest of mankind, they naturally contracted such prejudices and prepossessions as tended to flatter their own vanity, and to increase their partial regard for that village or tribe of which they were members. But however warmly attached to their kindred and friends, it could not be expected that, in their ordinary behaviour, they would exhibit much delicacy or

* Tacit. de Mor. German. c. 14

refinement of manners. They were too little acquainted with the dictates of prudence and sober reflection, to be capable of restraining the irregular sallies of passion; and too little conversant in the arts of polished society, to acquire a facility of yielding up their own opinions, and of sacrificing their own inclinations and humours, to those of their companions. The head of every family, unaccustomed to bear opposition or controul, demanded an implicit submission and obedience from all its members. When he met with great provocation, it was not unusual for him to take away the life of a servant; and this was regarded as an exercise of domestic authority, for which he could not be subjected to any punishment*. Even the feelings of natural affection did not prevent the children from being, in like manner, subjected to the arbitrary power of the father, and from experiencing, on many occasions, the unhappy effects of his casual displeasure. Neither does the condition of the mother appear to have been

* "Occidere solent, non disciplina et severitate, sed impetu et ira, ut inimicum, nisi quod impune." Tacit. de Mor. German. c. 25.

superior to that of her children: the little attention which, in a rude age, is usually bestowed upon the pleasures of sex, and the inferiority of the women in strength, courage and military accomplishments, deprived them of that rank and consequence which they enjoyed in a civilized nation. There is great reason to believe that the husband commonly bought his wife from her father, or other male relations, and that he considered her in the light of a servant or slave. If she was guilty of adultery (a crime which, from the general simplicity of manners, was probably not very frequent, but which, by introducing a connection with a stranger, was highly prejudicial to the interest of the family) the punishment inflicted by the husband, was that of stripping her naked, turning her out of doors, and whipping her through the village*.

In the intercourse of different families, and in their common amusements, their behaviour

* Tacit. de Mor. German. c. 18, 19. The conformity of the German manners with those of other barbarous nations, in relation to the condition of women and children, I have endeavoured to illustrate, in a treatise entitled, *An Enquiry into the Origin of Ranks.*

was suited to the spirit and disposition of a martial, but rude and ignorant people. Their military life, which was incompatible with industry, prevented the growth of avarice, the usual attendant of constant labour and application in every lucrative profession. Their employments were such as united them by a common tie, instead of suggesting the idea of a separate interest, or engaging them in that struggle for riches, by which the pursuits of every man are, in some measure, opposed to those of his neighbour. Their herds and flocks, in which their wealth principally consisted, being under the management and direction of a whole village or tribe, were considered, in some sort, as the joint property of all; so far at least, as to render individuals willing, on all occasions, to relieve their mutual wants, by sharing their goods with one another. Hence that hospitality and generosity which is so conspicuous among shepherd nations in all parts of the world. "No nation," says the author above quoted *, "is more hospitable than the Germans. They make no difference, in

* Tacit. de Mor. Germ. § 21.

" this respect, between a stranger and an ac-
" quaintance. When a person has been libe-
" rally entertained in one house, he is con-
" ducted to another, where he is received with
" the same hearty welcome. If a guest, at
" his departure, should ask a present from his
" entertainers, it is seldom refused; and they
" will ask any thing of him with the same
" freedom. They are fond of making pre-
" sents, which are scarcely understood to lay
" the receiver under any obligation."

Their military operations, no doubt, required a violent, though an irregular and transient exertion; but upon the conclusion of an expedition they were completely at liberty to indulge themselves in rest and idleness. From these opposite situations, they contracted opposite habits, and became equally restless and slothful. When not engaged in the field, the warriors disdained to assist in domestic offices, they even seldom exercised themselves in hunting; but, leaving the care of their cattle, and of their houshold, to the women and children, or to the old and infirm, they were accustomed to pass their time in listless indolence, having little other enjoyment but what they derived

from food or from sleep*. That from such dispositions they found great delight in convivial entertainments, and were given to great excesses in eating and drinking, may easily be supposed. By the pleasures of intoxication, they sought to dissipate the gloom of that languor and weariness with which they were oppressed, and to enliven the barren prospect which the ordinary course of their thoughts and sentiments was capable of presenting to them. For the same reason they were addicted to games of hazard; insomuch that persons who had lost their whole fortune at play would afterwards, it is said, venture to stake their liberty; and having still been unlucky, would voluntarily become the slaves of the winner†.

* "Quoties bella non ineunt, non multum venationibus, "plus per otium transigunt, dediti somno, ciboque. Fortis- "simus quisque ac bellicosissimus nihil agens, delegata do- "mus et penatium et agrorum cura fœminis senibusque, "et infirmissimo cuique ex familia, ipsi hebent mira di- "versitate naturæ, cum iidem homines sic ament inertium "et oderint quietem." Tacit. de Mor. Germ. c. 15.

——"Diem noctemque continuare potando nulli probrum." Ibid. c. 22.

† Aleam (quod mirere) sobrii inter seria exercent, tanta lucrandi perdendique temeritate, ut cum omnia defecerunt,

The practice of gaming must have been carried to a high pitch, when fashion, even among such barbarians, had made it a point of honour to discharge a game-debt of that extraordinary nature. It is observable, that in countries where men have exhausted the enjoyments arising from the possession of great riches, they are apt to feel the same want of exercise and occupation, as in that simple age when they have not yet contracted those habits of industry by which wealth is acquired; and they are forced to make use of the same expedient to deliver them from that *tædium vitæ*, which is the most oppressive of all misfortunes. The opposite extremes of society appear in this respect to coincide; and excessive gaming is therefore the vice, not only of the most opulent and luxurious nations, but of the most rude and barbarous.

Among all the German nations, the Saxons, who appear to have been scattered over the pe-

extremo ac novissimo jactu de libertate et de corpore contendant. Victus voluntariam servitutem adit. Quamvis junior, quamvis robustior, adligari se ac venire patitur. Ea est in re prava pervicacia: ipsi fidem vocant. Tac. de Mor. Germ. c. 24.

ninsula of Jutland, and along the neighbouring shores of the Baltick Sea, were the most fierce and barbarous, as they were most completely removed from that civility and improvement which every where attended the progress of the Roman arms. Their maritime situation, at the same time, had produced an early acquaintance with navigation, and had even qualified them to undertake piratical expeditions to several countries at a distance. They had, accordingly, long infested the coasts of Britain and Gaul; insomuch that in the former country it was found necessary to appoint a military officer, with a regular force, to guard against their depredations.

Making allowance, however, for such differences as might arise from this peculiarity of situation, their character and manners were similar to those of the other inhabitants of Germany, and, in general, to those of the wandering tribes of shepherds in every age or country.

Upon the whole, when we examine the accounts delivered by the best historians, concerning the ancient inhabitants of Germany, as well as the Saxons in particular, we find

nothing, either in their public or private institutions, or in their habits and ways of thinking, which we can reasonably suppose to have occasioned any peculiarity in the government established by the latter people in Britain. Whatever peculiarity therefore is observable in the Anglo-Saxon government, it must have arisen from causes posterior to the migration of that people into Britain; from the nature of the country in which they settled; from the manner in which their settlements were formed; or from other more recent events and circumstances.

Some writers fondly imagine, that they can discover, in the political state of the Saxons, while they remained in their native forests, the seeds of that constitution which grew up in England during the government of the Anglo-Saxon princes. With respect to those innate principles of liberty which have been ascribed to this people, it must be observed, that in proportion as mankind recede from civilized manners, and approach to the infancy of society, they are less accustomed to authority, and discover greater aversion to every sort of restraint or controul. In this sense the

Saxons may be said to have possessed a stronger relish for freedom than many of the other German tribes; as the present Indians of America, who are mere hunters and fishers, discover a still freer spirit than appeared among the Saxons. But as this love of liberty proceeds from the mere want of the common means of improvement, and from no original peculiarity of character, it is not likely to be retained by such barbarians, after they have opportunities of improving their condition, by acquiring property, and by extending the connexions of society. When the Saxons in Britain became as opulent as the German or Scythian tribes, who settled in other provinces of the Roman empire, there is no reason to believe, that in consequence of their primitive poverty and barbarism, they were with more difficulty reduced into a state of subordination, and submission to civil authority. The ancestors of almost every civilized people may be traced back to the most rude and savage state, in which they have an equal title to be distinguished, as men impatient of all restraint, and unacquainted with the commands of a superior.

CHAP. III.

Settlement of the Saxons in Britain.

THE Saxons accepted with joy and alacrity the proposals made to them by the Britons; and it appears to have been stipulated, that they should immediately send a body of troops into Britain, to be employed in the defence of the country, and to receive a stated hire during the continuance of their services*. In consequence of this agreement, Hengist and Horsa, two brothers, and persons of distinction among the Saxons, with about sixteen hundred followers, landed in the isle of Thanet, in the year 449; and having defeated the Picts and Scots, confined them, in a short time, within their ancient boundaries. The Saxon troops immediately after, were stationed by Voltigern partly upon the confines of

* Stillingfleet Orig. Brit.——Bede says, that the Saxons first took occasion to quarrel with the Britons, by demanding an increase of their *allowance*, to which he gives the name of *annona*. Hist. Eccles. lib. i. c. 15.

the northern wall, and partly upon the Kentish coast, the two places that had been usually secured with garrisons under the late dominion of the Romans. In such a situation these auxiliaries, who formed the principal strength of the country, could hardly fail to perceive their own importance, and to entertain the design of extorting a permanent settlement from the inhabitants. With this view, Hengist is said to have persuaded the Britons to hire an additional number of his countrymen, as the only effectual means for securing themselves from the future incursions of the enemy; and, upon an application for that purpose, was joined by a new body of Saxons, amounting to five thousand men. By this reinforcement he found himself superior to the disjointed and unwarlike forces of the country. Having therefore secretly concluded a treaty of peace with the Picts and Scots, and pretending that the articles of the original agreement, with relation to the pay of his troops, had not been observed, he ventured to throw off the mask, and openly to make war upon the Britons. His example was followed by other adventurers, among the same people, who, at the head of

different parties, allured by the hope of plunder, and of a new settlement, invaded the coasts of Britain, and endeavoured to penetrate into the country. Their attempts were crowned with success, and the most valuable part of the island was at length reduced under their dominion. This great event, however, was not accomplished without a violent struggle, nor in less than a hundred and seventy years; during which time many battles were fought, with various fortune. It is remarkable that, notwithstanding their fears and pusillanimity, when first abandoned by the Romans, the Britons, in the course of their long-continued contest with the Saxons, defended themselves with more obstinate resolution, than, upon the downfal of the Roman empire, was discovered by any of the other provinces, though supported by the armies of Rome. The want of any foreign assistance was, in all probability, the cause of this vigorous and spirited behaviour; as it called forth the exertion of their powers, and produced in them a degree of courage and discipline, which the provinces enjoying the protection of the Roman government were not under the same necessity of acquiring.

We have no full account of the circumstances attending the settlement of the Saxons in Britain; but we may form an idea of the manner in which it was completed, from the general situation of the people, from the imperfect relations of this event by our early historians, and from the more distinct information that has been transmitted concerning the settlement of other German nations, in some of the Roman provinces upon the continent of Europe.

The followers of any particular leader having gained a victory, became the masters of a certain territory, and enriched themselves with the spoil of their enemies. Willing to secure what they had obtained, they were led afterwards to offer terms of accommodation to the vanquished; with whom they appear, on some occasions, to have made a formal division of their land and other possessions. But even in those cases, where no express treaty of this nature had been formed, the same effects were produced, from the mere situation of the combatants; and upon the conclusion of a war, the parties were understood to have the property of the respective districts which they had been

able to occupy or to retain. Such of the Britons as had been made captives in war were doubtless, in conformity to the general practice of the ancient Germans, reduced into a state of servitude; but those who had escaped this misfortune resided in the neighbourhood of the Saxons, and often maintained a friendly intercourse with them.

The ambition, however, and avidity of these barbarians, incited them, at a future period, to renew their former hostilities; and these were generally followed by new victories, and by a farther extension of conquest. In this manner, after a long course of time, the country was completely subdued by these invaders; and the ancient inhabitants were, according to accidental circumstances, partly degraded into a state of slavery, and partly, by particular treaties, and by long habits of communication, incorporated with the conquerors.

From the declamatory representations of some early annalists, the greater part of historians have been led to suppose, that such of the Britons as escaped captivity were either put to death by their barbarous enemies, or, disdaining submission, and expecting no mercy,

retired into Wales, or withdrew into the country of *Armorica* in France, to which, from them, the name of *Bretagne* has been given. An acute and industrious antiquary, Mr. Whitaker, has lately shown, I think in a satisfactory manner, that this extraordinary supposition is without any solid foundation. That many of the Britons were at that period subjected to great hardships, and, in order to save themselves from the fury of their enemies, were even obliged to quit their native country, may be easily believed; but that the Saxons were animated with such uncommon barbarity, as would lead them, in direct opposition to their own interest, to root out the ancient inhabitants, must appear highly improbable. Of the total extirpation of any people, by the most furious conquerors, the records of well authenticated history afford not many examples. It is known, at the same time, that no such cruelty was exhibited by any of the German nations who conquered the other provinces of the Roman empire; and it must be admitted, that the situation of all those nations was very much the same with that of the Saxons, as also that they were a people in all respects of

similar manners and customs. There is even complete evidence that, in some parts of the Island, the Britons were so far from being extirpated, that they were permitted to retain a certain proportion of the landed property; and it is remarkable, that this proportion, being a third part of the whole, was the same with that retained by the ancient inhabitants in some of those provinces, upon the continent of Europe, which were conquered by the other German tribes. Though, in other cases, the vestiges of such early transactions have not been preserved, it is highly probable that a similar division of the land was made, either by express contract, or by tacit agreement. There can be no reason to believe that the same Saxons would, in one part of the Island, exhibit such moderation and humanity to the vanquished people, and in another, such unprecedented ferocity and barbarity.

It is further to be observed, that the language which grew up in Britain after the settlement of the Saxons, and in which a large proportion of the *British* and the *Latin* tongues were incorporated with the *Saxon*, affords a sufficient proof that the inhabitants were compounded

of the different nations by whom these languages were spoken.

When the Saxons invaded Britain, they were entirely a pastoral people; but as they came into a country which had been long cultivated, they could scarcely fail to acquire very rapidly a considerable knowledge of agriculture. Having obtained a quantity of land that was formerly employed in tillage, and having procured a proportionable number of servants, already acquainted with the various branches of husbandry, it may easily be imagined that they would avail themselves of this favourable situation, for the prosecution of an employment so conducive to their comfortable subsistence.

In consequence of a general attention to agriculture, they must have been induced to quit the wandering life; since, in order to practise the employment of a farmer with any advantage, a continued residence upon the same spot is necessary. In the occupancy and appropriation of landed estates, those persons who had been most connected in war were most likely to become neighbours; and every little knot of kindred and friends were com-

monly led to build their houses together, that they might be in readiness to assist one another in their labour, and to unite in defending their possessions. The villages of German shepherds were thus converted into villages of husbandmen, which, in proportion to the progress of their arms, and to their advances in improvement, were gradually enlarged and spread over the country. It should seem that, upon the first settlement of the Saxons, the whole people were distributed into little societies of this kind; and no individual was so opulent, that he could expect to live in security, without maintaining an alliance and intimate communication with others. This custom of resorting to villages, introduced by necessity, in times of extreme barbarism and disorder, is even at present retained by many of the farmers in England; although from a total change of manners and circumstances, it is evident that a separate residence, upon their different farms, would often be much more convenient.

While the Saxons, by their intercourse with a more civilized people, were thus excited to a considerable improvement of their circumstances, the Britons were, from an opposite

situation, degraded in the same proportion, and continued to sink in ignorance and barbarism. Engaged in a desperate conflict, in which every thing dear to them was at stake, and having to cope with an enemy little practised in the refinements of humanity, they were obliged, in their own defence, to retaliate those injuries which they were daily receiving; and by the frequent exercise of depredation, they became inured to rapine and injustice. The destructive wars, in the mean time, which were incessantly kindled, and which raged with so much violence in every quarter of the country, were fatal to the greater part of its improvements. The numerous towns which had been raised under the protection and security of the Roman government, and which now became the usual refuge of the weaker party, were often sacked by the victorious enemy, and after being gradually depopulated, were at length either laid in ruins, or left in the state of insignificant villages. In those times of universal terror and confusion, the ancient schools and seminaries of learning were abandoned, and every person who cultivated the arts subservient to luxury

and refinement, was forced to desert such useless occupations, and betake himself to employments more immediately requisite for preservation and subsistence. In the course of two centuries, within which the conquest of the more accessible and valuable parts of Britain was completed, the monuments of Roman opulence and grandeur were entirely erased; and the Britons who remained in the country, and who retained their liberty, adopted the same manner of life with their Saxon neighbours, from whom they were no longer distinguishable, either by the places of their residence, or by their usages and political institutions.

Those conquerors of Britain who received the general appellation of Saxons had issued from different parts of the German coast, at some distance from one another, and belonged to different tribes or nations: they have been divided, by historians, into three great branches, the *Angles*, the *Jutes*, and the *Saxons*, properly so called. As the leaders of the several parties belonging to any of these divisions possessed a separate influence over their own adherents, and prosecuted their enterprises in different parts of the country, so they naturally

rejected all ideas of subordination, and endeavoured to acquire a regal authority; the result of which was, that, after various turns of fortune, no less than seven independent states, each under its own particular monarch, were at length established.

The followers of Hengist and Horsa, composed of Jutes, acquired a settlement in the east corner of the Island, and established their dominion in what is now the county of Kent. Different parties of the proper Saxons occupied a much larger territory, and laid the foundations of three different kingdoms. Those who, from their situation, were called the Southern Saxons, established themselves in the counties of Sussex and Surrey; the West Saxons extended their authority over the counties to the westward, along the Southern coast; and the East Saxons took possession of Essex, Middlesex, and a considerable part of Hertfordshire. The Angles were still more numerous, and the territories which they occupied were much more extensive. By them was formed the kingdom of the East Angles, in the counties of Cambridge, Norfolk, and Suffolk; that of Northumberland, extending over

all the country which these barbarians had subdued, from the Humber to the Frith of Forth; and that of Mercia, comprehending the inland counties, which were in a manner included by the other kingdoms of the Heptarchy.

In the western part of the Island, from the Land's-End to the Frith of Clyde, the ancient inhabitants were still able to maintain their independence; and in this large tract of country were erected four British pricipalities or kingdoms; those of Cornwall, of South Wales, of North Wales, and of Cumberland. To the North of the Friths of Forth and Clyde the Picts and Scots retained their ancient possessions.

The changes produced in the manners and customs of the Saxons, by their settlement in Britain, were such as might be expected, from the great change of situation which the people experienced, in passing from the state of shepherds to that of husbandmen. As in following the employment of the latter, they necessarily quitted the wandering life, and took up a fixed residence, they were enabled to acquire *property in land*; with which it is probable they were formerly unacquainted. The

introduction of landed property among mankind has uniformly proceeded from the advancement of agriculture, by which they were led to cultivate the same ground for many years successively; and upon the principle that every man has a right to enjoy the fruit of his own labour, became entitled, first, to the immediate crops they had raised, and afterwards to the future possession of the ground itself, in order that they might obtain the benefit of the improvement which their long cultivation had produced. In this appropriation, of so great importance to society, the Saxons in Britain were undoubtedly stimulated, and instructed, from the cultivated state of the country, as well as from the example of the people whom they had subdued.

This alteration in their circumstances had necessarily a mighty influence upon the conduct of their military operations. As a great part of their property was now incapable of being transported, the inhabitants of each village were induced to fortify, in some degree, the place of their abode, for the preservation of their most valuable effects; and therefore, in going out to meet an enemy, instead of carrying along with them their cattle, and other

moveables, and being accompanied by their wives and children, as well as by the aged and infirm (the usual practice in the pastoral life) none but the actual warriors had occasion to take the field. The immediate plunder, therefore, arising from a victory, was rendered more inconsiderable; and even this the victors were commonly obliged to secure at home, before they could conveniently undertake a new enterprize. Thus, after the settlement of the Saxons in Britain, they were less in a condition to carry on wars at a great distance; and they appear to have laid aside, for the most part, their foreign piratical expeditions.

The permanent residence of the people tended likewise to open a regular communication between different villages; the inhabitants of which, by remaining constantly in the same neighbourhood, were led by degrees to contract a more intimate acquaintance. From the acquisition of landed possessions, which by their nature are less capable than moveables of being defended by the vigilance and personal prowess of the possessor, the necessity of the public interposition, and of public regulations for the security of property, must have been

more universally felt. From these causes, it is natural to suppose that the connections of society were gradually multiplied, and that the ideas of justice, as well as of policy and government, which had been entertained by the primitive Saxons, were considerably extended and improved.

The introduction of landed property contributed, on the other hand, to increase the influence and authority of individuals, by enabling them to maintain upon their estates a greater number of dependents than can be supported by persons whose possessions are merely moveable. The heads or leaders of particular families were thus raised to greater consideration; and, in the respective communities of which they were members, obtained more completely the exclusive direction and management of public affairs. The influence of the great leader, or prince, by whom they were conducted in their common expeditions, was proportioned, in like manner, to his private estate, and extended little farther than to his own tenants; for which reason, in the several kingdoms of the Heptarchy, the sovereign possessed a very limited authority, and the

principal powers of government were lodged in a *Wittenagemote*, or national council, composed of the independent proprietors, or leading men in the state.

Although the monarchs of these different kingdoms claimed an independent sovereignty, yet, in their struggles with the Britons, they often procured assistance from one another, and were combined against the ancient inhabitants of the country, their common enemies. The direction of their forces was, on those occasions, committed to some particular monarch, who, in conducting their joint measures, was frequently under the necessity of calling a wittenagemote, or great council, from all the confederated kingdoms. Thus the idea of a permanent union among all the kingdoms of the Heptarchy, and of a leader, or chief magistrate, at the head of that large community, together with a set of regulations extending to all its members, was gradually suggested: according to the opulence or abilities of the different Saxon princes, they were, by turns, promoted to that supreme dignity; which became, of course, the great object of their ambition, and the source of those violent

animosities which, for a period of about two hundred years, continually subsisted among them. The most powerful of the states belonging to this confederacy were those of Wessex, Mercia, and Northumberland, to which the rest were gradually reduced into a kind of subordination; till at length, about the year 827, the several kingdoms of the Heptarchy were subdued by Egbert, the king of the West Saxons, who transmitted to his posterity the sovereignty of those extensive dominions. The same prince extended his authority over all the Britons on the south side of the Bristol channel, and became master of a considerable part of Wales, and of the Cumbrian kingdom. From this time the distinctions among the different Saxon states were in a great measure abolished, and the several territories, united under Egbert, received the general name of England; as the people, from the union of the two principal nations, and in contradistinction to their countrymen in Germany, were called the Anglo-Saxons.

Several circumstances appear to have contributed to the accomplishment of this great revolution. With the bravery and military

accomplishments usual among the chiefs and princes of that age, Egbert, who had been educated in the court of Charles the great, is said to have united an uncommon degree of political knowledge and abilities. His own kingdom, situated along the southern coast of Britain, was probably the most improved; if not the most extensive, of those which had been erected by the Anglo-Saxons. In almost all the other kingdoms of the Heptarchy, a failure of the lineal heirs of the crown had given rise, among the principal nobility, to a contest about the succession; Northumberland, in particular, was weakened by intestine disorders, and in no condition to resist a foreign power; so that, by the conquest of Mercia, the only other independent state, the king of Wessex was left without a competitor, and found no difficulty in establishing an universal sovereignty.*

* It must not however be supposed that the power of all the kings of the Heptarchy was at this period entirely destroyed; they retained a subordinate authority, founded upon their great property. The princes of Northumberland and Mercia still retained the title of *king*; and in the reign of Alfred we find them still claiming independence.—See William of Malmsbury.

There can be no doubt that the reduction of all these different kingdoms into one monarchy contributed to improve the police of the country, and to civilize the manners of the people. The scene of anarchy and violence which was constantly exhibited during the conquest of Britain by the Saxons was incompatible with any attention to the arts of civil life, and in a great measure extinguished the remains of Roman improvement. The beginning of the seventh century, which falls about the conclusion of that period, may, therefore, be regarded as the æra of greatest darkness and barbarism in the modern history of Britain. The advances, however, that were made, even after this period had elapsed, were very slow and gradual. So long as the country was divided into a number of petty states, independent of each other, and therefore often engaged in mutual hostilities, the persons and property of individuals were not secured in such a manner as to encourage the exercise of useful employments.

It appears, indeed, that the monarchs in several of those kingdoms were anxious to prevent disorders among their subjects, and, with

the assistance of their national councils, made a variety of statutes, by which the punishment of particular crimes was defined with great exactness. Such were the laws of Ethelbert, and some of his successors, in the kingdom of Kent; those of Ina, the king of the West Saxons; and Offa, of the Mercians*. These regulations, however, were probably of little avail, from the numerous independent states into which the country was divided; because an offender might easily escape from justice, by taking sanctuary in the territories of a rival or hostile nation; but when the different kingdoms of the Heptarchy were united under one sovereign, private wars were more effectually discouraged, justice was somewhat better administered, and the laws established throughout the Anglo-Saxon dominions were reduced to greater uniformity. We are not, however, to imagine that, from this period, the same regulations in all respects, were extended over the whole English monarchy. The system of private law, being formed in good measure by

* See the Collections of the two former, in Wilkins Leg. Anglo-Sax.—The laws of king Offa have not been preserved.

long usage, was necessarily different in different districts; and the customs which prevailed in the more considerable had obtained a currency in the smaller states of the Heptarchy. Thus we find that the law of the West Saxons was extended over all the states on the south side of the Thames*, while the law of the Mercians was introduced into several territories adjacent to that kingdom†. In a subsequent period a third set of regulations, probably a good deal different from the two former, was adopted in the northern and eastern parts of the country.

* Called Westsaxenlaga.

† Called Mercenlaga. The inhabitants were denominated, from the kind of law which they observed. See Ran. Higden Polychron.—In France the Pays de Droit écrit and the Pays des Coutumes, were distinguished from a similar circumstance.

CHAPTER IV.

Similarity in the Situation of the Anglo-Saxons, and of the other Barbarians who settled in the Provinces of the Western Empire.—How far the State of all those Nations differed from that of every other People, ancient or modern.

DURING the same century in which the Anglo-Saxons began their settlements in England, the other provinces of the western empire were invaded by a multitude of rude nations, from Germany and the more easterly parts of the world. Allured by the prospect of booty, these barbarians had long made accidental incursions upon the frontier provinces; and having, by repeated successes, discovered the weakness of the Roman state, they at length endeavoured to gain more solid advantages, by settling in the countries which they had subdued. The Roman emperors were not only obliged to submit to these encroachments, but were even forced, in many cases, to enter into an alliance with those invaders, to employ them

as auxiliaries in the armies of Rome, and to bestow upon them landed possessions, upon condition of their defending the country. But these were merely temporary expedients, which in the end contributed to increase the power of the barbarians. Different swarms of these people advancing in succession, and pushing each other forward in quest of new possessions, continued to penetrate into the Roman dominions, and at last entirely overran and dismembered the western provinces. The Franks, the Burgundians, and the Wisigoths settled in Gaul. Another branch of the Wisigoths established their dominion in Spain. Africa became a prey to the Vandals. Italy, for a long time the centre of Roman wealth, and of Roman luxury, invited, in a particular manner, the attacks of poverty and barbarism; and after it had suffered from the successive inroads of many different nations, a great part of the country was subjected to the Ostrogoths, and in a subsequent period, to the Lombards.

As the original manners and customs of all these nations were extremely analogous to those of the Saxons in England, and as their conquest and settlement in the western empire

were completed nearly in the same manner, it was to be expected that they would fall under a similar government. It has happened, accordingly, that their political institutions are manifestly formed upon the same plan, and present, to the most careless observer, the same aspect and leading features, from which, as in the children of a family, their common origin may clearly be discovered. They differ, no less remarkably, from all the other systems of policy that have been recorded in ancient or modern history. It may be worth while to examine, more particularly, the causes of the uniformity, so observable among all those nations, and of the peculiarities, by which they are so much distinguished from the other inhabitants of the world. In this view, there occur five different circumstances that seem to merit attention.

1. The settlement of the barbarous nations, upon the western continent of Europe, as well as in England, was effected by the gradual subjection of a more civilized people, with whom the conquerors were at length completely incorporated.

The rude and ignorant tribes who subdued

the Roman provinces, were too little connected with one another, and too little accustomed to subordination, to unite in prosecuting any regular plan of conquest; but, according as they were excited by provocation, or met with any encouragement, they made occasional inroads, with different degrees of success; and when they had overrun a particular district, they commonly chose to remain in the country, and frequently concluded a treaty of peace with the ancient inhabitants.

Having, on those occasions, become masters of a large territory, which had been long occupied in tillage, and having, by repeated victories, obtained a number of captives, whom they reduced into slavery, they found it an easy matter to employ their slaves in cultivating the land which they had procured. In this situation they soon made such progress in agriculture, as determined them to relinquish their wandering life, and apply themselves to the acquisition of separate landed estates. By their intercourse, at the same time, with such of the old inhabitants as retained their freedom, they necessarily acquired a variety of knowledge, and became acquainted with many of the com-

mon arts of life to which they had formerly been strangers.

It was not to be expected, however, that these barbarians would long remain at rest; or that they should haye any difficulty in finding pretences for quarrelling with a people whom they meant to strip of their possessions. In a course of time, therefore, new animosities broke out, which were followed by repeated military enterprises, attended with similar circumstances; till at last, by successive extensions of territory, and after several centuries had elapsed, the whole of the western empire was dismembered, and reduced under the power of these invaders.

The events by which this great revolution was accomplished, could not fail to produce very opposite effects, upon the ancient inhabitants of the country, and upon the new settlers. The former, while, in consequence of the violence and disorder which prevailed, and of their intercourse with the barbarians, they sunk very rapidly into poverty and barbarism, communicated in their turn to the latter a few great lines of that cultivation, which had not been entirely effaced among themselves. In the end,

those two sets of people were entirely blended together; and their union produced such a compound system of manners and customs, as might be expected to result, from the declining state of the one, and the rising state of the other.

The destruction of the Roman provinces struck out, in this manner, a sudden spark of improvement, which animated their victorious enemies, and quickly pervaded the new states that were founded upon the ruins of the western empire. In the earliest accounts of the modern kingdoms of Europe, we find the people, though evidently retaining very deep marks of their primitive rudeness, yet certainly much advanced beyond the simple state of the ancient Germans. Their husbandry, no doubt, continued for ages in a very low and imperfect condition, insomuch that extensive territories were often permitted to lie waste and desolate; yet such as it was, it procured the necessaries of life in greater plenty, and produced of course a more universal attention to its conveniencies. Their permanent residence in one place gave room and encouragement to the exercise of different employments, from which, during

their former migrations, they were in a great measure excluded. Their houses were built of more lasting materials, and rendered more commodious, than the moveable huts in which they formerly sheltered themselves. Particular persons, having acquired very great landed estates, were enabled, by the remaining skill of Roman artificers, to erect such fortresses as were sufficient to defend them from the sudden incursions of an enemy; and lived, in suitable magnificence, at the head of their tenants and domestics. The numerous, and opulent towns, which had been scattered over the dominions of Rome, though they suffered greatly in the general wreck of the empire, were not, however, universally destroyed or deserted; and such of them as remained, were frequently occupied and inhabited by the leaders of the conquering tribes. In these, and even throughout the whole of the country, that policy, which had become familiar to the old inhabitants, was, in many respects, continued; and in the early codes of laws, collected by the princes of the barbarous nations who settled in the western empire, we often discover a close imitation of the Roman jurisprudence.

In these particulars, the situation of the modern states of Europe appears to have been a good deal different from that of every other nation, of whom any accounts have been transmitted to us. In many parts of the world, the rude inhabitants have continued unconnected with any other people more improved than themselves; and have therefore advanced very slowly in the knowledge of arts, as well as in the progress of the social life. From the remotest period of antiquity, the Arabs and Tartars have remained, for the most part, in a pastoral state; and are still almost entirely ignorant of husbandry. The Indians of America still derive their principal subsistence from hunting and fishing; and are in a great measure strangers to the invention of taming and rearing cattle. In early ages men are destitute of sagacity and reflection, to make use of those discoveries which fortune may throw in their way; and their improvement is much retarded by those habits of sloth which, being fostered by the primitive manner of life, are not to be overcome without extraordinary incitements to labour and application.

Among the instances, preserved in history,

of nations who have acquired a connection with others, by means of a conquest, we meet with none that are similar to those exhibited in Europe, during the period which we are now considering. The conquest in Asia, by Alexander and his successors, was that of one opulent and civilized people over another; and produced no farther alteration in the Greek states, but that of inspiring them with a taste of Asiatic luxury and extravagance.

The first military efforts of the Romans were employed in subduing the small neighbouring states of Italy, whom they found in the same barbarous condition with themselves; and they had become a great nation, firmly established in their manners and political system, before they directed their forces against the refined and cultivated parts of the world. Besides, the Roman virtue disdained, for a long time, to imitate the talents and accomplishments of the people whom they had subdued.

China, and some other of the great Asiatic kingdoms, have been frequently overrun and conquered by several hordes of Tartars, accidentally combined under a great leader: but the conquest, in these cases, was not carried on

slowly and gradually, as in the provinces of the western empire: it was completed by one or two great and rapid victories; so as, on the one hand, to prevent the learning and civilization of the vanquished people from being destroyed by a long-continued course of war and devastation; and, on the other, to prevent the conquerors, by long neighbourhood and acquaintance, from being incorporated with the former inhabitants, in one common system of manners, customs, and institutions. The final success, therefore, of the victorious army, produced no farther revolution, than by suddenly advancing their general, together, perhaps, with some of his principal officers, to the head of a great and civilized empire; of which the native country of the conquerors became only a tributary province.

The same observation is applicable to the dominion acquired by Mahomed, and some of his immediate successors; which was not established by a gradual settlement of Arabian tribes, in the rich countries of Asia; but by a rapid conquest, that gave rise to no intimate coalition of the victors with those who submitted to the Mahometan yoke. No other

change, therefore, was produced in the state of the conquered nations, than what arose from subjecting them to a new religion, and to a new set of monarchs; while the wandering Arabs, the original followers of Mahomed, remained, for the most part, in their primitive state of barbarism. The conquest of the Saracens, and of the eastern empire, by the Turks, had a greater resemblance to the progressive inroads of those who conquered the western provinces; but it was far from proving equally destructive to the former civilization of the conquered people, or from reducing them to the level of their barbarous conquerors.

2. The German or Gothic nations, who settled in the western part of Europe, were enabled, in a short time, to form kingdoms of greater extent, than are usually to be found among people equally rude and barbarous.

Of all the arts which contribute to improve or to embellish society, that of government requires the most enlarged experience and observation; for which reason, its progress towards perfection is proportionably gradual and slow. In that simple age, in which labour is not yet divided among separate artificers,

and in which the exchange of commodities is in a great measure unknown, individuals, who reside at a distance from one another, have no occasion to maintain an intimate correspondence, and are not apt to entertain the idea of establishing a political connection. The inhabitants of a large country are then usually parcelled out into separate families or tribes, the members of which have been led, by necessity, to contract habits of living together, and been reduced under the authority of that leader who is capable of protecting them. These little communities are naturally independent, as well as jealous of one another; and though, from the dread of a common enemy, they are sometimes obliged to combine in a league for mutual defence, yet such combinations are generally too casual and fluctuating to be the foundation of a comprehensive and permanent union.

But those barbarians who conquered the western empire were quickly induced, and enabled, to form extensive associations; partly, from the circumstances attending the conquest; and partly, from the state of the country in which they formed their settlements.

With respect to the circumstances attending their conquest, it is to be observed, that their tribes were far from being large or numerous, and that they overran and subdued a very large tract of country; in consequence of which, the members of the same tribe were enabled to occupy great landed estates, and came to be settled at a proportionable distance from one another. Individuals who had belonged to a small community, and who had been accustomed to fight under the same leader, were thus dispersed over an extensive territory; and, notwithstanding this change in their situation, were naturally disposed to retain their former connections and habits. The notion of uniting under a single chief, which had been established among the members of a wandering tribe of shepherds, continued, therefore, to operate upon the same people, after they had acquired ample possessions, and had reduced multitudes under their dominion.

The extent of the kingdoms, erected by those barbarous nations, was likewise affected by the state of each Roman province, in which their settlements were made.

As every Roman province constituted a part of the whole empire; so it formed a distinct society, influenced by national views, and directed by a separate interest. Among the inhabitants of the same province, united by their local situation, by the ties of friendship and acquaintance, and even by that common system of oppression to which they were subject, a regular intercourse was constantly maintained. Those who lived in villages, or in the open country, carried on a variety of transactions with the several towns in the neighbourhood, where they found a market for their goods, and were supplied with those conveniencies which they required. The inhabitants of these towns, and of the whole province, were, at the same time, closely connected with the capital, where the governor resided in a kind of regal pomp and magnificence, and directed the various wheels and springs of administration. Here the public money, accumulated from different parts, was again distributed through the various channels of government; and hither men of all descriptions, the poor and the rich, the idle and the indus-

trious, were attracted from every quarter, by the views of profit, or pleasure, or of ambition.

The changes which at different periods were made in the political constitution of Rome, produced no great alteration, as has been already observed, either in the extent or condition of her provincial governments. The ancient boundaries of the provinces appear to have been generally retained under the later emperors; though, in order to secure the public tranquillity, they were often subdivided into particular districts, which were put under the direction of subordinate officers. The connections, therefore, between the several parts of the same province, were gradually strengthened from the length of time during which they had subsisted.

As, by the conquest of those countries, the ancient inhabitants were not extirpated, it is natural to suppose that their former habits of intercourse were not obliterated and forgotten; but, on the contrary, were in some degree communicated to the conquerors. They who had lived under the same government were still disposed to admit the authority of a single

person, and to remain in that state of union and subordination to which they had been accustomed. Particular chiefs having occupied the remaining towns belonging to a Roman province, were of course rendered masters of the adjacent territory; and he who had set himself at the head of the most powerful district, was in a fair way of becoming sovereign of the whole.

It may also be worthy of notice, that as the conquering tribes adopted a number of the Roman institutions, their principal conductor was frequently in a condition to avail himself of that authority, however declining, which the Roman government continued to maintain: and by assuming, or obtaining, the dignity which had belonged to the chief magistrate of a province, was enabled with greater facility to extend his dominion over the territories which had formerly acknowledged the jurisdiction of that officer. Thus we find that Clovis who conquered a great part of Gaul, was, near the end of this reign, invested with the title of *consul*, and probably with that of *pro-consul*, by the emperor Anastasius; and that the posterity of Clovis were at the pains

to procure, from the emperor Justinian, a resignation of all the rights of the empire over that nominal branch of his dominions*.

In like manner Theodoric, the king of the Ostrogoths, who had been invested, in the eastern empire, with the title of *patrician* and *consul*, and who had obtained for himself and his followers a settlement in Thrace, was afterwards commissioned by the emperor Zeno to conquer Italy, and take possession of the country †.

From these causes, countries at a great distance from one another were forced into a sort of political union: and the boundaries of a modern kingdom came, in most cases, to be nearly of the same extent with those of an ancient Roman province.

As Italy, which comprehended the numberless villas, and highly-cultivated pleasure grounds, belonging to the opulent citizens of Rome, was the object of more attention than those parts of the empire which lay at a greater distance, it was early subjected to a more ac-

* Hist. de l'Etablissement de la Mon. Fran. par l'Abbe Du Bos. liv. 4. ch. 18. liv. 5. ch. 7.

† Ibid. liv. 4. ch. 3.

curate police, and divided into smaller districts. It was distributed by Augustus, into eleven *regions;* and in the time of the emperor Adrian that country, together with Sicily, Sardinia, and Corsica, included no less than seventeen divisions. The smallness of the districts into which it was thus broken by the Roman government, had, no doubt, an influence upon the new arrangements which it underwent from the invasion of the barbarians; and made it fall more easily into a number of petty states, under the several dukes, or nobles, who assumed an independent authority.

In England, though the most part of the territories which had composed the ancient Roman province were at last united in one kingdom, yet this union was effected more slowly, and with greater difficulty, than in many of the other European countries. The settlement of the Anglo-Saxons was produced in a different manner from that of the other German nations who settled upon the continent of Europe. As the expeditions of the latter were carried on, for the most part, by land, it was usual for the whole of a tribe or nation to advance in a body, and after they

had defeated the Roman armies, to spread themselves over the extensive territory which fell under their dominion. The original connections, therefore, among the individuals of the conquering nation, co-operated with the circumstance of their settling in the same province, to facilitate their reduction, either by conquest or confederacy, under one supreme leader. The naval incursions of the Anglo-Saxons were, on the other hand, made by small detached parties, collected occasionally by any single adventurer, who, for the sake of a precarious settlement, was willing to relinquish his kindred and acquaintance. The followers of every separate leader were therefore too inconsiderable to occupy great landed possessions; and as they invaded England at different times, and in different places, with scarce any previous concert, and with little attachment to one another, they discovered so much the stronger disposition to remain in separate states, and to preserve their primitive independence. From these circumstances, we may account for the division of England into so many independent kingdoms; which were not reduced under one monarch till between

three and four centuries after the first settlement of those invaders.

3. The great extent of the kingdoms that were formed upon the ruins of the western empire, together with the rudeness of the people by whom they were established, appears to have occasioned that system of feudal tenures, which is commonly regarded as the most distinguishing peculiarity in the policy of modern Europe.

The disposition to theft and rapine, so prevalent among rude nations, makes it necessary that the members of every family should have a watchful eye upon the conduct of all their neighbours, and should be constantly upon their guard to preserve their persons from outrage, and their property from depredation. The first efforts of civil government are intended to supersede this necessity, by punishing such offences, and enabling the individuals of the same community to live together in peace and tranquillity. But these efforts, it is evident, are likely to be more effectual in a small state than in a large one; and the public magistrate finds it much more difficult to extend and support his authority over a multitude

of individuals, dispersed through a wide country, than over a small number, confined to a narrow district. It is for this reason that government has commonly been sooner established, as well as better modelled, in communities of a moderate size, than in those which comprehend the inhabitants of an extensive region.

In proportion to the great number of people, and the great extent of territory, in each of the modern European kingdoms, the advances of authority in the public were slow, and its capacity of restraining violence and disorder was limited. The different families of a kingdom, though they acknowledged the same sovereign, and were directed by him in their foreign military enterprizes, were not, upon ordinary occasions, in a situation to feel much dependence upon him. Acquiring great landed possessions, and residing at a distance from the capital, as well as in places of difficult access, they were often in a condition to set the whole power of the crown at defiance; and disdaining to submit their quarrels to the determination of the civil magistrate, they assumed a privilege of revenging with their

own hands the injuries or indignities which they pretended to have suffered. When not employed, therefore, in expeditions against a public enemy, they were commonly engaged in private hostilities among themselves; from the frequent repetition of which there arose animosities and feuds, that were only to be extinguished with the life of the combatants, and that, in many cases, were even rendered hereditary. In such a state of anarchy and confusion, the strong were permitted to oppress the weak; and those who had most power of hurting their neighbours, were the most completely secured from the punishment due to their offences.

As the individuals of a nation were thus destitute of protection from government, they were under the necessity of defending themselves, or of seeking protection from one another; and the little societies composed of near relations, or formed accidentally by neighbourhood and acquaintance, were obliged to unite, in the most intimate manner, to repel the attacks of their numerous enemies. The poor were forced to shelter themselves under the influence and power of the rich; and the latter

found it convenient to employ a great part of their wealth, in order to obtain the constant aid and support of the former. The head of every family was commonly surrounded by as great a number of kindred and dependents as he was capable of maintaining; these were accustomed to follow him in war, and in time of peace to share in the rural sports to which he was addicted; it was their duty to espouse his quarrel on every occasion, as it was incumbent on him to defend them from injuries. In a family so small, that all its members could be maintained about the same house, a mutual obligation of this kind was naturally understood from the situation of the parties; but in larger societies it was rendered more clear and definite by an express agreement. A man of great opulence distributed part of his demesne among his retainers, upon condition of their performing military services; as, on the other hand, the small proprietors in his neighbourhood, being incapable of maintaining their independence, were glad to purchase his protection, by agreeing to hold their land upon the same terms. Hence the origin of vassalage in Europe, the nature of which will be

more particularly explained hereafter. Every considerable proprietor of land had thus a number of military servants, who, instead of pay, enjoyed a part of his estate, as the reward of their services. By this distribution and arrangement of landed possessions, the most natural remedy was provided for the evils arising from the weakness of government. Men of inferior station, who singly were incapable of defending their persons or their property, obtained more security, as well as consideration, under their respective superiors; and the inhabitants of a large territory, being combined in societies, who had each of them a common interest, were in a better condition to resist the general tide of violence and oppression.

From these observations we may discover how far the connections between the superior and vassal, and the various parts of what is called the feudal system, are peculiar to the modern states of Europe, or belong to them in common with other nations.

In Greece and Rome, or in any of the small states of antiquity, there are few or no traces to be discovered of the feudal institutions. From the inconsiderable number of people

collected in each of those ancient states, and from the narrowness of the territory which they inhabited, the government was enabled, at an early period, to extend its protection to all the citizens, so as to free them from the necessity of providing for their own safety, by associating themselves under particular military leaders. If any sort of vassalage, therefore, had been introduced in the infancy of those nations, it appears to have been abolished before they were possessed of historical records.

In many rude nations of greater extent, both in ancient and modern times, we may discern, on the contrary, the outlines of the feudal policy. This, if we can trust the relations given by travellers, is particularly the case at present in several of the kingdoms in Asia, and upon the southern coast of Africa. In these kingdoms, the number of barbarians collected under one sovereign has probably rendered the government so feeble, as to require a number of subordinate associations, for the protection of individuals; but the coalition of different families being neither so extensive, nor produced in the same rapid manner, as in the modern states of Europe, the regulations

to which it has given occasion are neither so numerous and accurate, nor have they been reduced into so regular a system.

4. The custom of duelling, and the peculiar notions of honour, which have so long prevailed in the modern nations of Europe, appear to have arisen from the same circumstances that produced the feudal institutions.

The political establishment, in all those nations, was, for a long time, incapable of preventing the unlimited exercise of private hostilities; and every family, being exposed to invasion from all its neighbours, was obliged to be constantly in a posture of defence. In these circumstances, the military spirit of the people was not only raised to a high pitch, but it received a peculiar direction, and was attended with peculiar habits and opinions.

In a war between two great nations, when large and well-disciplined armies are brought into the field, there is little room for individuals to acquire distinction by their exploits; and it is only expected of them, that, like the parts of a complex machine, they should perform, with steadiness and regularity, the several movements for which they are destined; nei-

ther are those who belong to the opposite armies likely to entertain much personal animosity, the national quarrel being lost in that promiscuous multitude among whom it is divided. But in the private wars that took place between the several families of modern Europe the case was very different; for the number engaged upon either side was commonly so small, and they had so little of military discipline, that every single person might act a distinguished part, and in the time of action was left in some measure to pursue the dictates of his own bravery or prudence; so that a battle consisted of little more than the random combats of such particular warriors as were led by inclination or accident to oppose one another. The natural consequence of such a situation was to produce a keen emulation between the individuals of the same party, as well as a stated opposition, and often a violent animosity, between those of different parties. In a long course of hostilities, the same persons were often led to encounter each other; and having fought (perhaps on different occasions) with various success, were at length excited by a mutual challenge to a compara-

tive trial of their strength, courage, or skill. By repeated struggles of this nature a continual jealousy was kept up between the members of different families, who in prosecuting their quarrels became no less eager to support their military character, and to avenge any insult or indignity, than to defend their possessions.

The private wars between different families, which gave rise to mutual emulation and jealousy, as well as to violent animosity and resentment, continued in Europe for many centuries, notwithstanding that some improvements were made by the people in the common arts and modes of living. To assassinate those from whom great provocation had been received was, among the primitive conquerors of the Roman empire, a method of revenge pursued without scruple, and beheld without censure. By degrees however the love of military glory prevailed over the gratification of resentment, and those who aimed at maintaining the rank of gentlemen became ashamed of taking an unfair advantage of an enemy, which might imply a confession of inferiority in prowess; but thought it incumbent upon them, whatever was the

quarrel, to invite him to an open contest, in which the superiority might be decided upon equal terms. Thus the practice of *duelling*, the most refined species of private vengeance, was rendered more and more fashionable; and in every country of Europe, according to its progress from barbarism, assassination became less frequent, and was held in greater detestation. In Spain and Portugal, the least improved of those countries, it never has been completely extirpated; and the inhabitants have not yet attained that refinement of the feudal manners, which the rest of Europe, from a still higher pitch of improvement, are now seeking to lay aside.

So far was the government from restraining the custom of duelling, that the efforts of the civil magistrate tended rather to encourage it. Those who had sustained an affront thought it dishonourable to apply for redress to a court of justice; but when a dispute had arisen in matters of property, and had become the subject of a law-suit, it frequently happened, that in the course of the debate the parties, by their proud and insolent behaviour, affronted each other; which made them withdraw their cause from the court, in order to determine it by the

sword; the judge was unable to prevent this determination, but he endeavoured to diminish the bad consequences that might arise from it. By regulating the forms of the encounter, and superintending the ceremonies with which it was conducted, he availed himself of the punctilios of honour, which fashion had established, and restrained the friends of either party from interfering in the quarrel. Hence the *judicial combat*, which has been erroneously considered by some as the origin of duelling, but which undoubtedly tended to support and extend the practice, by giving it the sanction of public authority. It has, accordingly, been observed, that as, in a judicial controversy, the most common provocation consisted in the parties contradicting each other in point of fact; so *giving the lie* has become that sort of offence, on account of which custom has rendered it most indispensably necessary to require *satisfaction* by fighting.

The institutions of *chivalry*, and the *jousts* and *tournaments*, were the natural appendages of the custom of duelling, or rather of that state of manners which gave rise to it.

In the battles of the feudal ages, men of

opulence and rank enjoyed many advantages over the common people, by their fighting on horseback, by the superior weapons and armour which they made use of, and above all, by that skill and dexterity which they had leisure to acquire. To improve these advantages was the great object of the gentry, who from their early years devoted themselves to the profession of arms, and generally became attached to some person of experience and reputation, by whom they were trained up and instructed, not only in the several branches of the military exercise, but in all those qualifications that were thought suitable to their condition. To encourage these laudable pursuits, a mark of distinction was bestowed upon such as had gone through a complete course of military education, and they were admitted, with peculiar ceremonies, to the honour of knighthood; from which their proficiency in the art of war, and in the virtues and accomplishments connected with that employment, were understood to be publicly ascertained and acknowledged.

Among the multitude of knights belonging to every country, who became professed can-

didates for fame, and upon that account rivals to one another, military sports, that afforded an opportunity of displaying those talents upon which the character of every gentleman chiefly depended, were of course the favourite entertainments. As these became the ordinary pastime among private persons, so they were exhibited, on particular occasions, by princes and men of high rank, with great pomp and solemnity. The *tournaments* were the greater and more public exhibitions, the *jousts* were those of an inferior and private nature; to both of which all who enjoyed the dignity of knighthood were made welcome: they were also invited to that *round table*, at which the master of the ceremony entertained his company, and of which the figure is said to have been contrived on purpose to avoid any dispute concerning the precedence of his guests.

These public spectacles were begun in France under the kings of the second race; and were thence, by imitation, introduced into the other countries of Europe. They are said to have been first known in England, during the reign of Stephen, and to have been

rendered common in that of Richard the first.

There can be no doubt that these institutions and practices, by which badges of distinction were given to military eminence, and by which numbers of individuals were brought to contend for the prize of skill and valour, would contribute to swell and diffuse the idea of personal dignity by which they were already elated, and to inflame that mutual jealousy by which they were set in opposition to one another. The same opinions and sentiments acquired additional force from those extraordinary enterprises in which the people of different European countries were accidentally combined against a common enemy; as in the wars between the Moors and Christians, and in the expeditions undertaken by the latter for the purpose of rescuing the holy sepulchre from the hands of infidels. The competition arising on those occasions among the numerous warriors collected in the same army, was daily productive of new refinements upon the military spirit of the times, and contributed to multiply and establish the forms and cere-

monies which, in every dispute of honour, were held indispensably necessary.

From these causes the custom of duelling has become so deeply rooted as, notwithstanding a total change of manners and circumstances, to maintain its ground in most of the countries of Europe; and the effect of later improvements has only been to soften and render more harmless a relict of ancient barbarity, which they could not destroy. In England, where the lower ranks of men enjoy a degree of consideration little known in other countries, the military spirit of the gentry has even descended to the common people, as appears from the custom of *boxing* peculiar to the English, by which they decide their quarrels according to such punctilios of honour as are dictated by the pure and genuine principles of chivalry.

In other ages and countries there is perhaps no instance of any people whose situation could lead them to entertain the same notions of military dignity which have been displayed by the modern inhabitants of Europe. The independent families or tribes of shepherds, in Tartary or in other parts of the world, have seldom

occasion to reside so long in the same neighbourhood as to create a stated opposition and jealousy between their different members. The nations of husbandmen, upon the southern coast of Africa, and in several parts of Asia, who have in some degree adopted the feudal policy, are too little advanced in civilization to admit of any refinement in their methods of executing revenge. In those ancient states that were most addicted to war, as in Rome and Sparta, the people were early brought under the authority of government, so as effectually to prevent the exercise of private hostilities. A Roman, or a Spartan, therefore, was never under the necessity of supporting his military dignity, in opposition to his own countrymen; but was constantly employed in maintaining the glory of his country, in opposition to that of its enemies. The prejudices and habits acquired in such a situation were all of a patriotic nature. The pride or vanity of individuals was exerted in acts of public spirit, not in private animosities and disputes.

M. Voltaire imagines that the practice of duelling, in modern Europe, has arisen from

the custom among the inhabitants, of wearing a sword, as an ordinary part of dress; but the ancient Greeks, as we learn from Thucydides, were, at an early period, accustomed to go armed; and there is ground to believe that the same custom has prevailed in all barbarous countries, where the people found themselves continually exposed to danger. The continuance of this practice in Europe longer than in other countries appears to be the effect, not the cause of duelling; or rather it is the effect of that peculiar direction given to the military spirit, of which duelling is the natural attendant.

5. The same situation produced the romantic love and gallantry by which the age of chivalry was no less distinguished than by its peculiar notions of military honour.

The appetite of the sexes, which in the greater part of animals, nature has, for wise purposes, connected with exquisite pleasure, is in the human species productive of sentiments and affections, which are of great consequence to the general intercourse of society, as well as to the happiness of individuals. These two sources of enjoyment, though in

reality inseparable, and though the latter is ultimately derived from the former, are not always increased and refined by the same circumstances. The mere animal instinct seems to be strengthened by every circumstance that gives occasion to habits of indulgence; but the peculiar passions that nature has grafted on this enjoyment appear on the contrary to be raised to the highest pitch, by the difficulty attending their gratification; which, as it fixes the imagination upon the same object, has a tendency to exalt its value, and to debase that of every other in proportion.

In the ages of poverty and barbarism, mankind are commonly too much occupied in pursuit of mere necessaries, to pay much regard to the intercourse of the sexes; and their simple desires with relation to this point being easily gratified as soon as they arise, are not likely to settle with much predilection or preference upon any particular person.

The first great improvements that are made in any country, with respect to the means of subsistence, being calculated to multiply the comforts and conveniences of life, enable the inhabitants to extend the circle of their plea-

sures, and to refine upon every enjoyment which their situation affords; the pleasures of sex become therefore, an object of greater attention, and being carried to a higher degree of refinement, are productive of more variety in the taste and inclination of different persons; by which they are often disappointed in the attainment of their wishes, and their passions are proportionably inflamed. The introduction of property, which, being accumulated in different proportions, becomes the foundation of corresponding distinctions of rank, is at the same time the source of additional restraints upon the free commerce of the sexes. By the innumerable pretensions to dignity and importance, derived from the vanity of opulence, or the pride of family, individuals have often to surmount a variety of obstacles in order to gratify their passions; and in contracting what is accounted an unsuitable alliance, they are commonly checked and controuled, not only by the watchful interposition of their relations, but still more by the rules of propriety and decorum, which custom, in conformity to the state of society, has universally established.

The effect of great wealth and luxury, in a polished nation, is on the other hand to create an immoderate pursuit of sensual pleasure, and to produce habits of excessive indulgence in such gratifications. In such a situation particular attachments are apt to be lost in the general propensity; and the correspondence of the sexes becomes, in a great measure, subservient to voluptuousness, or to the purposes merely of elegant amusement.

The passion of love, therefore, is likely to attain the highest degree of refinement in a state of society equally removed from the extremes of barbarism and of luxury.

The nations formed in the western part of Europe, upon the downfal of the Roman empire, appear to have continued for many centuries in that condition. They were possessed of such opulence, and of such improvements in society, as to stamp some value upon the pleasures of sex, without creating much incitement to debauchery. Their distinctions of rank, arising from the very unequal distribution of property, and the mutual apprehension and jealousy which a long course of private hostilities had introduced among different

families, occasioned, at the same time, in their whole correspondence, a degree of caution and distrust unknown in other ages and countries. The women of every family, as well as the men, were taught to over-rate their own dignity, and to look upon it as disgraceful to give any encouragement to a lover, whose rank and worth did not entitle him to a preference, in the opinion of the world, and in that of her own prejudiced relations.

As no man in that age was allowed to claim any merit, unless he had acquired a military reputation, the warrior who had been inspired with a youthful inclination could not expect any marks of regard, far less a return of affection, without signalizing his fortitude and prowess, by encountering a variety of hardships and dangers. Before he had in this manner deserved the favour of his mistress, it was held inconsistent with her character to divulge any impression she had received to his advantage; and the laws of delicacy required that she should behave to him on all occasions with distance and reserve, if not with insolence and scorn. By the delays, the disappointments, the uncertainty of success, to which he was thus

exposed, his thoughts were long engrossed by that favourite object; and the ardours of a natural appetite were at length exalted into a violent passion.

The romantic love, peculiar to the ages of chivalry, was readily united with the high sentiments of military honour, and they seem to have mutually promoted each other. An accomplished character in those times required not only the most undaunted courage and resolution, supported by great generosity, and a contempt of every sordid interest, but also the most respectful regard and reverence for the ladies, together with a sincere and faithful passion for some individual. Persons possessed of these accomplishments, or who desired the reputation of possessing them, devoted themselves to the particular profession of protecting the feeble, of relieving the distressed, of humbling and restraining the insolent oppressor. Not content with ordinary occasions of acquiring distinction, there were some who thought it necessary to travel from place to place, with the avowed purpose of redressing grievances, and of punishing the injuries to which, from the disorderly state of the country, the unwar-

like and defenceless, but especially the female sex, were daily subjected.

It happened indeed in those times, as it naturally happens wherever mankind have been directed by fashion to admire any particular sort of excellence, that the desire of imitating the great and gallant actions of heroes and lovers, was often disfigured and rendered ridiculous by affectation, and became productive of artificial and fantastic manners. The knight-errant, who found no real abuses to combat, endeavoured to procure distinction by adventures of no utility, and which had no other merit but the danger attending them; as he who had never felt a real passion, tortured his mind with one merely imaginary, complained of rigours that he had never met with, and entered the lists to maintain that superior beauty and merit which he had never beheld.

It is unnecessary to remark, that these institutions and customs, and the circumstances from which they proceeded, were peculiarly unfavourable to trade and manufactures. The Saxons in England, as well as the other nations who settled about the same time upon the

western continent of Europe, though immediately after their settlement they had been excited to a considerable improvement in agriculture, and in some of the common arts of life, remained afterwards for ages in that hostile and turbulent state which gave little room or encouragement for the exercise of peaceable occupations. The manners introduced into those countries in early times being thus confirmed by long usage, have become proportionably permanent, and, notwithstanding the changes of a subsequent period, have left innumerable traces of their former existence.

CHAP. V.

The State of Property, and the different Ranks and Orders of Men, produced by the Settlement of the Saxons in Britain.

THE distribution of property among any people is the principal circumstance that contributes to reduce them under civil government, and to determine the form of their political constitution. The poor are naturally dependant upon the rich, from whom they derive subsistence; and, according to the accidental differences of wealth possessed by individuals, a subordination of ranks is gradually introduced, and different degrees of power and authority are assumed without opposition, by particular persons, or bestowed upon them by the general voice of the society.

The progress of the Saxon arms in Britain produced an appropriation of land and moveables, by all the free members of the community. Every warrior considered himself as entitled to a share of the spoil acquired by the conquest; and obtained a number of captives,

and a landed territory, proportioned to his valour and activity, or to the services which he had performed. It is probable that the several conquering parties were seldom at the trouble of making a formal division of their acquisitions, but commonly permitted each individual to enjoy the booty which he had seized in war, and to become master of such a quantity of land, as by means of his captives, and the other members of his family, he was enabled to occupy and to manage. Such of the ancient inhabitants, on the other hand, as remained in the country, and had preserved their liberty, were in all probability understood to retain the property of those estates of which they had been able to maintain the possession.

There is good reason to believe that, for some time after the settlement of those barbarians in England, the landed estates acquired by individuals were generally of small extent. The Saxons were among the poorest and the rudest of the German nations who invaded the Roman empire; and Britain was, on the other hand, one of the least cultivated of all its provinces; at the same time that the progress of the conquerors in the appropriation of land

(which from these causes must have been proportionably slow and gradual) was further obstructed by the vigorous opposition of the natives, who seem to have disputed every inch of ground with their enemies.

We accordingly find that, from the beginning of the Anglo-Saxon government, the land was divided into *hides*, each comprehending what could be cultivated by a single plough. This, among a simple people, becomes a natural boundary to the possession of those who live in the same house, and are jointly at the expence of procuring that useful but complicated instrument of husbandry. The general estimation of the Anglo-Saxon lands, according to this inaccurate measure, points out sufficiently the original circumstance which regulated the extent of the greater part of estates. When, by the progress of cultivation, and by future successes in war, the landed property of individuals was increased, the ancient standard of computation remained; and the largest estates, by comparing them with the smallest, were rated according to the number of *hides* which they contained*.

* See Spelm. Gloss. v. *Hyda.*

While the estates possessed by the Anglo-Saxons were small, they were cultivated under the immediate inspection of the owner, his kindred or servants, who lived in his own house, and were fed at his table. But when the territory acquired by any person became too extensive, and the members of his family became too numerous, to render this mode of living any longer convenient, a part of his land was parcelled out into different farms, and committed to the management of particular bondmen, from whom, at the end of the year, he required an account of the produce. A part of any great estate came likewise to be occupied by the kindred and free retainers of the proprietor, to whom, in return for that military service which they undertook to perform, he assigned portions of land for a maintenance.

Hence the distinction between the *in-land* of the Saxons, and the *out-land*: the former was what lay next the mansion-house of the owner, and was retained in his own hands; the latter, what lay at a greater distance, and was in the possession and management either of his retainers or servants*.

* See Spelman on Feuds and Tenures by Knight-service, ch. 5.

The *out-land* of every opulent person came thus to be possessed by two different sorts of people; the bond-men, who laboured their farms for the benefit of their master, and those freemen (most commonly his kindred) who had become bound to follow him in war, and upon that condition were entitled to draw the full produce of their possessions. The former have been called *villeins*, the latter *vassals*.

Considering the right of the latter to the lands which they possessed, in contradistinction to that of the person from whom they derived their possession, the landed estates of the Anglo-Saxons have been divided into *allodial* and *feudal*. The allodial estates were those of every independent proprietor. Over these the owner enjoyed a full dominion; and he had a right to alienate or dispose of them at pleasure. Upon the death of a proprietor, they descended to his heirs, according to certain rules of succession which custom had introduced; and they were not burdened with service of any kind in favour of a superior.

The feudal estates were those possessed by vassals upon condition of military or other ser-

vices: these were held originally during the pleasure of the superior, though it appears that custom had early secured the possession of the vassal for a limited time. When he had ploughed and sowed his ground, it was thought equitable that he should be allowed to reap the crop arising from his labour and expence. Thus a year came soon to be acknowledged as the shortest period, upon the conclusion of which he might be deprived of his possession. Even after this period it was not likely that a superior would think of putting away his relations and ancient retainers, with whose personal attachment he was well acquainted, and of whose valour and fidelity he had probably been a witness. The possessions, therefore, of the greater part of the vassals, though not confirmed by any positive bargain, with respect to the term of their continuance, were in fact usually retained for life; and even upon the death of the possessor were frequently enjoyed by his posterity, whom, out of affection to the ancestor, the superior commonly preferred to a stranger, or to any distant relation. When the lands of a vassal had, by a positive

bargain, been only secured to him for life, or for a limited period, they were called *benefices**.

The differences which I have mentioned in the condition of estates, gave rise, most probably, to the celebrated distinction of *boc-land* and *folc-land*. The former, comprehending the estates of the nobler sort, was *allodial*, and being held in absolute property, was conveyed by a deed in writing; the latter was the land possessed by people of inferior condition, who having no right of property, but holding their possessions merely as tenants, for payment of rents or services, did not obtain any written title for ascertaining their rights†.

It may be remarked that *boc-land* might belong either to the king or to a subject, and that it implied no obligation to feudal services, in the latter case, more than in the former. It is true that subjects who enjoyed *boc-land* were bound to defend the kingdom from enemies by sea or land, and to build or repair bridges and castles‡: but these were services which they owed to the public as citizens, not to the

* V. Feud. Consuet. lib. i. tit. i. §. 1. 2.

† Spelm. on Feuds and Tenures by Knight-service, chap. 5.

‡ *Expedition*, *Burghbote*, and *Brigbote*.

king as vassals. These duties were imposed by a general law of the kingdom, and were laid upon the possessors of *folc-land* as well as of *boc-land*, upon the clergy as well as laity, in short, upon all the free members of the community*.

Such was the original state of property in the Anglo-Saxon government; from the consideration of which, together with the early circumstances and manners of the nation, the inhabitants, exclusive of the sovereign, may be distinguished into three different ranks or orders.

1. The first and most conspicuous was that of the military people. It is probable that for some time after the settlement of the Saxons in England, this comprehended all the free men of the nation. The general character of those adventurers, and the views with which they invaded Britain, were such as disposed every man, who had the direction of his own conduct, to become a soldier, and to engage in every enterprize by which either plunder or reputation might be procured. These war-

* See Spelman on Feuds and Tenures by Knight-service, chap. 8. 9. 10. 11.

riors, who in general were denominated *thanes*, came soon to be arranged into two classes; the one consisting of those heads of families who had acquired allodial property; the other of such retainers as held lands, by a military tenure, either of the king, or of any other allodial proprietor. Both these classes of people were accounted gentlemen, and were understood to be of the same rank, in as much as they exercised the honourable profession of arms; though in point of influence and power there was the greatest disparity, the vassals being almost entirely dependent upon their superior. The soldiers of this lower class appear to have received the appellation of *less*, or, *inferior thanes**.

2. The peasants composed a second order, greatly inferior in rank to the thanes of either class. They appear to have consisted chiefly of such persons as had been reduced into captivity during the long wars between the Britons and the Saxons, and had afterwards been entrusted by their masters with the management of particular farms; they were called *ceorls*, *carles*, or *churles*. Some of them, no

* Spelman, in the treatise above quoted.

doubt, were kept in the house of their master, and employed in cultivating the land in his own possession; but the greater number were usually sent to a distance, and placed, as it happened to be convenient, upon different parts of his estate. The former being under his eye, and acting on all occasions from his orders, remained for a long time in their primitive servile condition; the latter, on the contrary, being withdrawn from his immediate inspection, had necessarily more trust and confidence reposed in them, and were thence enabled; with some degree of rapidity, to improve their circumstances. From their distance, the master was obliged to relinquish all thoughts of compelling them to labour, by means of personal chastisement; and as, from the nature of their employment, he could hardly judge of their diligence, otherwise than by their success, he soon found it expedient to bribe their industry, by giving them a reward in proportion to the crop which they produced. They were thus allowed to acquire property; and their condition became similar, in every respect, to that of the *adscripti glebæ* among the ancient Romans, to that of the pre-

sent colliers and salters in Scotland, or of the bondmen employed in the mines in several parts of Europe. In this situation some of them, by industry and frugality, found means to accumulate so much wealth, as enabled them to stock their own farms, and become bound to pay a certain yearly rent to the master.

It must be acknowledged, the writers upon Saxon antiquities have generally supposed that the *ceorls* were never in a servile condition; that from the beginning they were free tenants, forming a distinct class of people, and holding an intermediate rank between the villeins or bondmen, and those who followed the military profession. But this supposition, so far as I know, is made without any shadow of proof: it probably took its rise from observing that the free tenants, towards the end of the Anglo-Saxon government, were very numerous, without attending to the circumstances from which they obtained their freedom. It is not likely, however, that in so rude and warlike an age any set of men, who had not been debased by servitude, and restrained by their condition, would attach themselves

wholly to agriculture, and be either unfit for war, or unwilling to engage in it. If the *ceorls* had not been originally in some degree of bondage, they would undoubtedly have been warriors; and we accordingly find that when, from the circumstances above mentioned, they had afterwards acquired considerable privileges, they were advanced to the rank and employment of thanes.

Though the peasants were chiefly employed in agriculture, they were sometimes engaged in other branches of labour, as a collateral profession. From the poverty and rudeness of the country, for some time after the settlement of the Saxons in Britain, it may easily be imagined that little encouragement was given to mechanical arts, and that artificers and tradesmen were not of sufficient consequence to become a separate order in the community. Some mechanics, even in that simple age, were doubtless necessary to procure the ordinary accommodations of life, but the demand for their work was too narrow to occupy the sole attention of any individual. Such of the bondmen as had attained a peculiar dexterity in performing any branch of manual labour,

were naturally employed by the master in the exercise of it, and thus were led, by degrees, to make some proficiency in particular occupations. But they were not hindered by these employments from cultivating the ground; and they obtained a maintenance in the same manner with the other peasants, either by living in the house of their master, or by the possession of separate farms upon his estate. As these mechanical employments were accounted more unwarlike and contemptible than the exercise of husbandry, there was yet less probability that any freeman would be willing to engage in them.

3. A third order of men, who in this period of the English history became more and more distinguished, was that of the clergy. The numerous body of church-men introduced by the Christian religion, especially in the western part of Europe, the extensive power and authority which they gradually acquired, together with the peculiar views and motives by which they were actuated, amidst the disorder and barbarism of the feudal times, are circumstances of so much magnitude, as to deserve particular attention in tracing any modern

system of European policy. A few remarks, however, concerning the nature and origin of ecclesiastical jurisdiction, and the primitive government of the Christian church, will be sufficient, upon a subject that has been so often and so fully examined.

SECTION I.

OF THE CHIEF REGULATIONS ATTENDING THE ESTABLISHMENT OF CHRISTIANITY IN THE ROMAN EMPIRE, AND IN THE MODERN KINGDOMS OF EUROPE.

After the Christian religion had been extended over a great part of the Roman dominions, it was at last, in the reign of Constantine, taken under the protection of government, and obtained the sanction of public authority. The uniformity of circumstances attending the introduction of this new religion, produced throughout the whole empire an uniform set of ecclesiastical regulations.

In every province, religious teachers had taken up their residence wherever they met with encouragement; and the country was, by degrees, divided into small districts, or pa-

rishes, in each of which a particular clergyman had gained an establishment.

As the inhabitants of a parish were accustomed to assemble at stated times for public worship, and were by that means united in a religious society, so the zeal with which they were animated in support of their religion disposed them to inspect the conduct and theological opinions of all their members. For the regulation of these, and of all their common affairs, the heads of families, belonging to every congregation, frequently held meetings, in which their pastor was naturally allowed to preside, and gradually obtained the chief direction of their measures. Even in secular matters, the people were disposed to be guided by his judgment; and when a controversy had arisen between individuals, he was esteemed the most proper person to compose the difference; which was therefore most commonly referred by the parties to his determination.

The advancement of Christianity opened a communication between the professors of this religion belonging to different parishes, who in like manner were accustomed to deliberate upon their common religious concerns. Some

particular clergyman became the ordinary president in those cases; and upon that account acquiring superior consideration and rank, was at length exalted to be superintendant, or bishop, of a large district or diocese. When these diocesan meetings were greatly multiplied, the attendance of the laity being found inconvenient, and appearing to them of less consequence, was gradually neglected, so that the business came to remain entirely in the hands of the clergy.

The minister of every parish was at first maintained by the occasional bounty of those who reaped the benefit of his instructions; and such was the attachment of the primitive Christians to their teachers, and to one another, that they cheerfully made contributions not only for that purpose, but also for the maintenance of their poor. In the declining state of Rome, when the decay of knowledge, by infusing a strong leaven of superstition, had corrupted the purity of the Christian religion, the clergy found means to obtain a more independent revenue, by persuading persons upon their death-bed to make donations to the church, in order to atone for their offences.

In the reign of the emperor Constantine, when Christianity became the established religion of the empire, testamentary bequests in favour of societies, which had formerly been prohibited by the Roman law, came to be permitted without controul; and from this time the fashion of leaving legacies to the church for pious uses became so universal, that the clergy were enabled to accumulate large estates, both in moveables and land.

The management of these estates, as of all other matters concerning religion, was naturally devolved upon the clergy of every diocese, who assumed a discretionary power of distributing the produce in such a manner as they thought most expedient, or most conformable to the purpose of the donors. As the bishop, however, acquired more influence in ecclesiastical meetings, he was in a capacity of appropriating to his own use a greater share of that revenue which fell under their disposal. His dignity became more conspicuous; and for supporting it a suitable estate was deemed necessary. His cathedral was enlarged and rendered more magnificent, a more pompous form of worship was introduced into it, and a

number of clergymen were appointed to assist in the religious services, or other branches of duty, that were supposed to belong to his department.

The rise of a bishop over the clergy of his diocese may be compared to that of a rude chief over the members of his tribe; as in both cases a superiority of station, derived from personal qualities, put it in the power of a single person to acquire superior wealth, and thence to become the permanent head or leader of a society: but the original pre-eminence of the chief arose from his military talents, that of the bishop, from the veneration paid to the sanctity of his character and profession. This makes the only difference in the nature of their advancement.

While those who had the direction of religious matters were thus advancing in opulence and power, there arose a new set of fanatics, who divided the esteem and admiration of the people, and were at length admitted into the clerical profession.

The erroneous notions entertained in the dark ages, concerning the Supreme Being; the supposition that he is actuated by anger

and resentment, in a literal sense, against those who transgress his laws, and that these passions are to be gratified by the mere suffering of his creatures; suggested to persons impressed with a strong feeling of their own guilt, and tortured upon that account with sorrow and remorse, the idea of submitting to voluntary penances, in order to appease an offended Deity, and to avert that future punishment which they were conscious of having deserved. From views of this kind, particular persons became disposed to retire from the world, and to deny themselves almost all the comforts and enjoyments of life: societies were afterwards formed, the members of which expressly bound themselves not only to submit to actual punishments, but to renounce all those pleasures and gratifications to which mankind have the greatest propensity, and for this purpose came under the vows of poverty, of chastity, and of obedience to the rules of their community. As christianity took a firmer hold of the mind than any of the religions which had been formerly established, this perversion of its doctrines was attended with consequences proportionably more extensive.

These misguided votaries to mortification being originally poor, were supported either by alms or by their manual labour; but their exemplary lives, and the austerities which they practised, having excited universal admiration, enabled them to follow the example of the secular clergy, by procuring donations from the people; and hence, notwithstanding the poverty still professed by individuals, their societies acquired the possession of great riches. The members of these communities were by degrees admitted into holy orders; and became no less instrumental in promoting the influence of the church, than in communicating religious instruction.

As the affairs of a diocese had fallen under the chief direction of a bishop, those of a monastery were conducted by an *abbot*, who presided in the meetings of the society, and who, by obtaining authority in consequence of that distinction, was at length permitted to assume the distribution and disposal of their property.

Although the authority and jurisdiction of the church in this early period of Christianity, and the subordination among different ranks of

churchmen, proceeded in good measure from the nature of the business committed to their care, and the influence derived from their profession, yet the general fabric of ecclesiastical government was likewise a good deal affected by the political circumstances of the Roman empire. The person exalted to the head of a diocese, was very often the minister of the most considerable town of that district, who from the greater weight and importance of his flock enjoyed a proportionable consideration among his brethren of the clergy. As by the civil policy of the empire many of those districts were united in what, according to the later division of the country, was called a *province*, the clergy of this larger territory were led frequently to hold provincial synods, in which the bishop of the capital city, acquiring respect from his residence near the seat of government, became the regular president, and was thence exalted to the dignity and title of a *metropolitan* or *archbishop*. In the yet more extensive divisions of the empire, which were called *jurisdictions*, the clergy were induced, upon some occasions, to deliberate; and in those greater meetings the right of presiding

was claimed by the bishop, who resided in the same city with the governor of each respective *jurisdiction*. Hence there arose a still superior rank in the church, that of an *exarch* or *patriarch*, who obtained certain prerogatives over the clergy of that great division. Of all the patriarchs in Christendom those of Rome and Constantinople, the two great capitals of the empire, became soon the most distinguished, the former of which enjoyed a pre-eminence over all the clergy in the western, the latter over those in the eastern provinces.

Upon the conquest of the western empire by the barbarous nations, the ancient inhabitants, who had for a long time been declining in arts and knowledge, experienced at once a violent change of situation, and were suddenly plunged into the darkness and barbarism of their conquerors. As those conquerors, however, embraced the Christian religion, they submitted implicitly to the discipline of the church, and to all the forms of ecclesiastical government which they had found established. The Roman clergy, therefore, remained upon ther former footing, and were far from losing any of their former privileges; they even en-

deavoured, amidst the general destruction of science, to preserve a degree of that literature which, in order to propagate and defend the tenets of their religion, they had been under the necessity of acquiring, and which was the great support of their influence and popularity. With this view, and for the instruction of the people, more especially of those that were to be admitted into holy orders, they erected schools in their cathedrals and monasteries, and thence laid the foundation of those communities, possessed of ecclesiastical powers and privileges, which have received the exclusive appellation of *colleges*.

From these two circumstances, from the gross ignorance and the consequent superstition of the people, and from the comparative knowledge and abilities of the clergy, the latter were enabled to reap the utmost advantage from their situation, and to acquire an almost unlimited ascendency over the former. Hence the doctrines of the church concerning her influence in the remission of sins, and concerning the distribution of rewards and punishments in a future state, came to be modelled in such a manner as was plainly calculated to

promote her temporal interest. From this period, therefore, the donations of land to the church were greatly increased, and the bishops, abbots, and other dignified clergymen, who reaped the chief advantage from these benefactions, became possessed of estates, which enabled them in some degree to rival the greater thanes of the country. From the same causes the contributions made by every congregation for the support of their minister, were gradually augmented. To augment these contributions, and to render them permanent, the church employed the utmost address and influence of all her members. What was at first a voluntary offering came afterwards by the force of custom, to be regarded as a duty. Having gradually raised this taxation higher and higher, the clergy, after the example of the Jewish priests, demanded at length a tenth part of the annual produce of land, as due to them by divine appointment. Not contented with this, they in some places insisted upon the same proportion of the annual industry; and it came to be maintained, that they had even a right to the tenth part of the alms given to beggars, as well as of the

hire earned by common prostitutes in the exercise of their profession*. To inforce the obligation of submitting to these monstrous exactions, was for a long time, it is said, the great aim of those discourses which resounded from every pulpit, and of the pious exhortations delivered by each ghostly father in private. The right of levying *tythes*, which was first established in France, and which afterwards made its way through all the western parts of Christendom, created to the church a revenue of no less value than what she derived from her landed possessions†. The tythes of every parish were collected by its own minister, but a large proportion of those duties came to be demanded from the inferior clergy by the bishop of the diocese.

When the provinces of the western empire were broken into a number of independent kingdoms, it might have been expected that the church establishment in those countries would experience a similar revolution, and that the clergy of every separate kingdom, being

* F. Paul's History of Benefices.

† The council of Mascon, in 585, excommunicated all those who refused to pay tythes. Ibid.

detached from those of every other, would form a separate ecclesiastical system. It is not difficult, however, to discover the circumstances which prevented such a separation; and which, notwithstanding the various oppositions of civil government, united the church of all the western countries of Europe in one great ecclesiastical monarchy.

The patriarchs of Rome and Constantinople, of whom the one, as has been already observed, became the head of the western, and the other of the eastern part of Christendom, were in a different situation with respect to the establishment of their power and dignity. The patriarch of Constantinople, from his connection with the principal seat of government, appears for some time to have been exalted above his western rival, and to have enjoyed superior authority. But after he had attained a certain pitch of exaltation, the very circumstance which had hitherto promoted his advancement, tended immediately to stop the progress of it; for no sooner did he become an object of jealousy to the civil power, than the vicinity of the imperial residence contributed the more effectually to thwart and controul every pro-

ject for the extension of his privileges. The Roman pontiff, on the other hand, when he had risen to such opulence and dignity as might have excited the envy and disgust of the civil magistrate, was, by the dissolution of the western empire, freed from the troublesome inspection of monarchs, who probably would have checked the growth of his power; and being placed in the situation of an independent prince, was at full liberty to put in practice every politic measure which might either enlarge his temporal dominions, or extend his authority over that numerous body of clergy who already owned his supremacy.

It may further explain the history of the western church to observe, that while the bishop of Rome was thus in a condition to avail himself of that superiority which he had acquired, the circumstances of the clergy were such as made it their interest to unite in one body, and to court his protection. The character of churchmen was, from the nature of their profession, a good deal different from that of the laity, and incited them to very opposite pursuits. The former, in a military and rude age, were generally drawn from the inferior

ranks of life; at the same time that, from the prevalence of superstition, they possessed great influence over the minds of the people, and were daily advancing their claims to power and emoluments. By the ancient nobility, therefore, or leading men of every country, and still more by the sovereign, the haughtiness, the insolence, and the rapacity of these upstarts, was often beheld with indignation and resentment, and produced continual jealousies and disputes between those different orders; the latter endeavouring to maintain and to extend a set of immunities and privileges, which the former were no less eager to restrain. In such a contest the ecclesiastics of any particular kingdom were as much inferior to their adversaries in direct force, as they were usually superior in skill and dexterity; and their situation naturally pointed out the expedient of soliciting assistance from their brethren in the neighbouring kingdoms. That assistance they very seldom failed to procure. The controversy of every individual was regarded as the common cause of the whole order. By adhering to one another, however disjoined in point of civil government, they became sufficiently power-

ful, not only to avoid oppression, but even to defend their usurpations; and by combining, like the soldiers of an army, under one leader, their forces were directed to the best advantage.

The opportunities which this great leader enjoyed, of augmenting his revenue, and of increasing his power, may easily be conceived. In the multitude of disputes which occurred between the clergy and laity in the different nations of Europe, the former, in order to obtain his protection, were obliged to submit to various taxes, and to the extension of his prerogatives. Hence the payment of the *first fruits*, and such other impositions upon the livings of churchmen, were established in favour of the holy see.

In like manner, during the wars that were carried on between the different potentates of Europe, the contending parties, finding that the countenance and approbation of the Roman pontiff would give great weight and popularity to their cause, were sometimes under the necessity of purchasing his favour, by ratifying his titles, and permitting the exercise of his claims over their subjects. From the same circumstances, the temporal dominions of the

pope in Italy were greatly enlarged, and his authority, as an independent sovereign, was recognized. Upon the conquest of Normandy by the king of France, his holiness, who had thrown his whole influence into the scale of that monarch, was rewarded with a great proportion of the conquered territory; and, at the same time, was enabled to assume the privilege of conferring the imperial dignity upon the conqueror.

The disputes among the clergy themselves, more especially between the secular and regular clergy, were another source of the papal aggrandizement. Every society of monks was subject originally to the bishop within whose diocese their monastery was situated; but as they advanced in riches and popularity, they were led to assert their independence; and in supporting their pretensions, having to struggle with the whole body of secular clergy, they were induced to court the head of the church, by such obedience and compliances as were likely to gain him over to their interest.

In the eastern church, where these causes did not operate in the same degree, neither the authority of the clergy, nor that of the

patriarch of Constantinople, rose to the same height. The payment of tythes, though it was there warmly asserted by churchmen, as well as in the west, was never inforced by public authority; nor was the head of the church in that part of the world in a condition to establish such an extensive revenue as had been acquired by the Roman pontiff.

It may be observed, on the other hand, that the same circumstances which produced an independent ecclesiastical jurisdiction in Christendom, have been productive of similar effects in other religions, and in different parts of the world. Among illiterate nations, the clergy, by explaining the will of the Deity, or by directing mysterious rites and ceremonies, are naturally raised to great importance; and if many such nations profess a common religion, and maintain an intercourse with one another, their spiritual guides, by extending their ideas of a common interest beyond the bounds of a single kingdom, are easily reduced under one great ecclesiastical leader. Hence an independent system of church government is likely to arise.

This was formerly the situation of the Celtic

nations, who inhabited a great part of Europe: they were under the influence of a common religion, the ministers of which are said to have possessed a jurisdiction superior to that of the civil magistrate. These *druids* were, at the same time, united in one society, independent of the different political states to which they belonged; and were under the direction of a *chief druid*, who resided in Britain, and whose authority extended over the laity as well as the clergy, in all the nations of Celtic original.

The authority of the grand *Lama* or *high-priest* of the Tartars, which is acknowledged by many tribes or nations totally independent of one another, had, in all probability, the same foundation. This ecclesiastical monarch, who resides in the country called Little Thibet, is also a temporal prince. The numerous clergy, in the different parts of Tartary, who acknowledge his supremacy, are said to be distinguished into different ranks or orders, somewhat analogous to those which take place in Christendom; and the ordinary priests, or lamas, are subjected to the authority of bishops, whose jurisdiction is subordinate to that of the sovereign pontiff. Without pretending to ascer-

tain, with any degree of accuracy, the church-history either of the Celtic or Tartar nations, we cannot avoid remarking the general analogy that appears in the origin and constitution of all these different Hierarchies.

SECTION II.

THE ESTABLISHMENT OF CHRISTIANITY IN BRITAIN, UNDER THE ROMAN DOMINION, AND IN THE EARLY GOVERNMENT OF THE ANGLO-SAXONS.

CHRISTIANITY made its way into Britain, in the same gradual manner as into all the other parts of the Roman empire. It is supposed to have obtained a permanent footing in the country, under the government of Marcus Aurelius, at which time a bishop of Rome is said, upon the application of Lucius, a British king, to have sent over, to this island, several learned men, to preach and propagate the gospel. But whatever degree of credit may be due to this account, it is certain that, in the reign of the emperor Constantine, this religion was taken under the protection of

government, in Britain, as well as in all the other provinces of Rome; and that it continued in this situation until the island was abandoned by the Romans. During this period, the Christian church had received the same form as in all the other parts of the empire. Particular clergymen had obtained a settlement in small districts or parishes, according to the number and situation of the inhabitants*. Many of these districts were united under the inspection of a bishop, the minister of a cathedral church, and a metropolitan, or archbishop, was exalted over the whole clergy of a province. But though it is probable that this ecclesiastical establishment was modelled according to the situation of the great towns, and the chief divisions introduced by the civil government of the country; yet neither the number of the British prelates, nor the churches in which they were settled, appear to be known with any degree of certainty†. Men-

* Gildas.—Also Whitaker, Hist. of Manchester.

† According to the monkish tradition, there were twenty-eight bishops in Britain, during the Roman government of that island. These corresponded to the twenty-eight

tion is made of three archbishops, who, it should seem, corresponded to three of the provinces, in the late arrangement which the Romans made of their British territories. The first resided in London; the second in York; and the third, whose jurisdiction extended over Wales, appears, at different times, to have had a different place of residence*. That the Hierarchy had early acquired a settled condition in Britain, and that its bishops held some rank among those of other churches, is evident from their sending representatives to the council of Arles, called in the year 314, and to other remarkable councils, that were afterwards convened in different parts of Christendom†.

The arrival of the Saxons in this island was productive of great disorder in the religious, as well as in the civil establishment. In those parts of the country which fell under the dominion of the Saxons, the Christian churches

considerable cities in the province. See Ranulph. Higden. lib. i.—This number of British cities is mentioned by Gildas, Bede, and others; and their names are transmitted by Nonnius.

* Ranulph. Higden. lib. i. † Stillingfleet, Orig. Britan.

were frequently demolished; the public worship was interrupted; and the clergy, in many cases, could neither be provided with a maintenance from the public, nor continue the regular exercise of their jurisdiction. The altars of Thor, and Woden, were often substituted for those of Jesus Christ; and the life and immortality which had been brought to light by the gospel, were obscured and eclipsed by the fictions of Hela's dreary abode, and Valhalla's happy mansions, where heroes drink ale and mead from the sculls of enemies whom they have slain in battle.

Wherever the ancient inhabitants were able to preserve their independence, their ecclesiastical policy remained without any alteration. This was particularly the case in the whole western part of the island, from the southmost point of Cornwall to the Frith of Clyde; not to mention the country to the northward, which the arms of the Saxons had not penetrated. In the territories where that people had formed their settlements, there is ground to believe that, after the tumult and violence attending the conquest had subsided, the two nations frequently maintained an amicable

correspondence, were in some measure united in one society, and enjoyed the free exercise of their religion*. As their long neighbourhood produced, by degrees, a communication of civil institutions and customs, it was likewise, in all probability, attended with some approximation of religious opinions and observances; and in this particular, it can hardly be doubted that the regular and well-established system of Christianity, to say nothing of its genuine merit in other respects, would have great advantage over the unformed and loosely connected superstition of the barbarians. In the ardour of making proselytes, and in the capacity of propagating their tenets, the professors of the former must have greatly surpassed those of the latter; and it was natural

* This was so much the case, that among the East Angles, according to the testimony of Bede, the Christian worship, and the Saxon idolatrous rites, were performed in one and the same church; such good neighbourhood was maintained between the two religions. "Atque in eodem fano et altare haberet ad sacrificium Christi et Arulam ad victimas dæmoniorum. Quod videlicit fanum, ex ejusdem provinciæ Alduulf, qui nostra ætate fuit, usque ad suum tempus perdurasse, et se in pueritia vidisse testabatur." Bed. Hist. Eccl. lib. ii. ch. 15.

to expect that the Saxons in England would at length follow the example of all the rude nations, who had settled in the provinces upon the continent, by adopting the religion of the conquered people.

What laid the foundation for a general and rapid conversion of the Saxons, was an event, which happened about an hundred and fifty years after their settlement in Britain. Ethelbert, the sovereign of Kent, having married Bertha, the daughter of a king of the Franks; this princess, already a Christian, made open profession of her religion, and brought over a French bishop to reside at the Kentish court. This incident suggested to the Roman pontiff, Gregory the Great, a man of unbounded ambition, the idea of converting the Anglo-Saxons to Christianity, and, at the same time, of establishing his authority over the British clergy, who had hitherto neither acknowledged the papal jurisdiction, nor yielded an exact conformity to the tenets and observances of the Roman church. For these two purposes, he gave a commission to Augustine, one of the monks of a convent at Rome, with about forty assistants, to preach and propagate the gospel

in Britain*. By the industry of these, and of succeeding missionaries, the Christian religion, was, in the course of about half a century, established universally in all the kingdoms of the Heptarchy. The authority of the church of Rome went hand in hand with Christianity; and though the British clergy struggled for a considerable time to maintain their independence, and their peculiar doctrines, they were at length borne down by the prevailing system, and reduced into a subordinate branch of the Roman Hierarchy†.

The conversion of the Anglo-Saxons has been commonly regarded as an entirely new plantation of the gospel, in the territories which fell under the dominion of that people; and it seems to be imagined, that when Augustine entered upon his mission, there were no traces of Christianity remaining in those parts of the country. This opinion appears to have arisen, partly from the supposition, that the settlement of the Anglo-Saxons was

* Bed. Hist. Ecclesiast. lib. i. c. 23, 25.

† Bed. Hist. Eccles. lib. ii. seq.—Stillingfleet, Origin. Brit.—Henry's Hist. of Great Britain.

accompanied with a total expulsion of the ancient inhabitants, and partly from a disposition in subsequent ecclesiastical writers to undervalue that system of church-discipline and faith which had obtained in Britain, before it was fully subjected to the papal jurisdiction.

With respect to the general extirpation of the Britons, it seems to be a perfect chimera. Neither is there any reason to believe that they underwent any persecution from the Saxons upon account of their religion. The rude polytheism, professed by those conquerors, does not seem to have taken a firm hold of their minds, or to have inspired much animosity against foreign deities or modes of worship; and if, during the immediate conquest of the country, the British clergy were sometimes plundered or massacred, this, in all probability, proceeded from no peculiar enmity to their religion, but from the ferocity natural to barbarians, who, in the heat of a military enterprize, could not be expected to shew much regard to the distinction of characters or professions. The effect of these disorders, however, was only partial and temporary. It appears that, even in those parts of the country

where the Saxons had remained the longest; the ancient church buildings were far from being entirely destroyed; for we learn from Bede, that, upon the arrival of Augustine in Kent, he first preached in a church, which had been erected by the Romans in honour of St. Martin, and that soon after, when the monarch of that kingdom had been baptized, orders were given to build or *repair* churches, for the accommodation of the Christian missionaries*.

Upon the full restoration of Christianity in those parts of the country where it had been corrupted by the mixture of Saxon superstition, the religious establishments, which had been introduced under the dominion of the Romans, and which had always been preserved in the unconquered parts of the island, were completely revived; with this difference, that the British churches, in the degree of their submission to the papal authority, were brought into a greater conformity with the churches upon the continent. It is probable that the ancient parochial divisions had not been entirely lost; more especially in those districts,

* Hist. Eccles. l. i. c. 26.

which the Anglo-Saxons had but recently subdued when they embraced the religion of the former inhabitants*.

The number of bishops, it is natural to suppose, and the extent of their jurisdiction, were likewise directed, in some measure, by the antecedent arrangements in the provincial government of Britain; though, from the changes produced in the state of the country, many variations were, doubtless, become necessary. Of the three *archbishops*, who had formerly acquired a pre-eminence over the whole of the British clergy, one appears to have been sunk by the disjunction of Wales from the English monarchy; so that there came to be only two metropolitans under the Saxon establishment. The archbishop of the northern department resided, as formerly, at York; but the seat of the other, from the residence of Augustine, who obtained the chief ecclesiastical dignity, was transferred from London to Canterbury†.

The revenue for maintaining the clergy was the same in Britain as in all the churches

* Whitaker, Hist. of Manchester; and the authorities quoted by him.

† Ranulph. Higden. lib. i.

acknowledging the jurisdiction of the Roman pontiff. It consisted, partly of contributions levied in every parish; and partly of landed estates, which the superstition of the people had led them to bequeath for pious uses: but the former of these funds remained longer than in the more southern parts of Europe, before it was converted into a regular tax, and exalted to a tenth of the whole yearly produce.

CHAPTER VI.

Institution of Tythings, Hundreds, and Counties.

IN every nation it must be a great object to provide for defence against the invasion of neighbouring states; but in a rude age, the provisions requisite for this purpose are few and simple. The great body of the people are soldiers, willing and ready to take the field whenever their service is necessary. From the mutual depredations frequent among a rude people, they become inured to hardships, and familiar with danger; and having little employment at home, they are glad to embrace every opportunity of acquiring military reputation, or of enriching themselves with the spoil of their enemies. Every person, therefore, as soon as he is capable of using arms, is accustomed to the use of them, and acquainted with the simple manner of fighting practised among his countrymen; so that, as the chief magistrate finds no difficulty in raising troops upon any occasion, he is put to little or no trouble in training and preparing

them for those military operations in which they are to be engaged.

The appointment of certain leaders in particular districts, to collect the forces upon any emergency, and to command them in time of battle, seems to be all that is wanted, in such a situation, for putting a whole kingdom in a complete posture of defence. A few regulations of this nature, arising obviously from the circumstances of a barbarous people, were, at an early period, established among the Saxons in England, as well as among their neighbours upon the continent.

Every feudal superior was the military leader of his own dependents; but upon the settlement of the Saxons in Britain, the landed estates acquired by the greater part of individuals were at first so small as to render the number of their vassals inconsiderable; and the *allodial* or independent proprietors were therefore under the necessity, amidst the disorder that prevailed in those times, of associating for mutual protection and security. Different families, connected by the ties of consanguinity, or otherwise, found it expedient as well as agreeable to settle in the same neighbourhood,

that they might on all occasions be in a condition to assist one another. Thus the inhabitants came to be distributed into villages of greater or less extent, according to circumstances; and the members of every village, accustomed from their infancy to live together, and finding themselves united by a common interest, were led to acquire the strongest habits of intimacy and attachment. These little societies received the appellation of *vills*, *towns*, or *free-bourgs*.

As these villages were formed upon the plan of defence, and were frequently employed in the exercise of hostilities, there naturally arose in each of them a leader, who by having the privilege of conducting their military enterprises, obtained also a degree of authority in the management of civil affairs. To this person the name of *head-borough* or *borsholder* (a word supposed by some to be contracted from *borough's elder*) was commonly given.

According to the early policy of the Anglo-Saxons, each of their villages was divided into ten *wards*, or petty districts; and hence they were called *tythings* or *decennaries*, as their leader was denominated a *decanus* or *tything-*

man. This regulation appears to have been extended over all the kingdoms upon the neighbouring continent; and in all probability it originated from the influence of ecclesiastical institutions*.

As, upon the first establishment of Christianity under the Roman dominion, the form of church government was in some respects modelled by the political constitution of the empire; so the civil government, in the modern states of Europe, was afterwards regulated in many particulars according to the system of ecclesiastical policy. When the western provinces of the Roman empire were conquered by the barbarous nations and erected into separate kingdoms, the conquerors, who soon embraced the Christian religion, and felt the highest respect for its teachers, were disposed in many cases to improve their own political institutions, by an imitation of that

* The term *free-burg* is sometimes applied not to the whole tything or village, but to each of those wards into which it was divided. [See the laws ascribed to William the conqueror. Wilkins, c. 32.] But more frequently a free-burg and tything are understood to be synonymous. See the Glossaries of Spelman and Du Cange, v. *Friborga.*

regularity and subordination which was observed in the order and discipline of the church.

In the distribution of persons, or of things, which fell under the regulation of the Christian clergy, it appears that, in conformity to the customs of the Jewish nation, a decimal arrangement was more frequently employed than any other. By the Mosaic institution the people were placed under rulers of thousands, of hundreds, of fifties, and of tens. A Jewish synagogue, corresponding to a modern parish, appears at a subsequent period to have been put under the direction of *ten elders*, of whom one became the chief ruler of that ecclesiastical division*. A tenth part of the annual produce was appropriated for the support of the Levites, as the same proportion of ecclesiastical livings was claimed by the high-priest.

* Dr. Lightfoot's Harmony of the Four Evangelists, part 3. on Luke chap. 4. ver. 15.—Lewis's Antiquities of the Hebrew Republic, b. 3. ch. 21.—Goodwin's Moses and Aaron, b. 2. ch. 2.—also Vitringa Archisynagogus illustratus.—This author agrees with Dr. Lightfoot, in supposing that the *decem otiosi*, mentioned as requisite in every synagogue, were officers employed in the business of that society; though he differs as to the particular employments that were allotted to them.

Hence we find that in modern Europe, the members of a cathedral church, as well as those of a monastery, were divided into ten branches, each of which was put under a director, and the tenth of these persons, or *decanus*, was intrusted with a superintendence of all the rest*. Hence too the modern institution of tythes, and the pretensions of the Roman pontiff, the Christian high-priest, to the tenth of all the revenues of the clergy†.

When the western part of Europe, upon the dissolution of the Roman government, had been reduced into a state of barbarism, by which the inhabitants were necessarily divided into separate villages or small towns, each of

* Burn's Eccles. Law.—Kennet's Paroch. Antiq.

† Though the distribution of persons and things according to *tens*, appears to have been immediately borrowed by the Christian clergy from the Jews, we find among many other nations a tendency to follow the same arrangement. Those natural instruments of notation, which every man carries about with him, the fingers, have probably been the original cause of the common arithmetical progression by *tens*, and of the general propensity to be governed by this number in the classification of objects.—The land-tax upon the ancient Roman provinces is said to have been a tenth of the produce.

those little communities was naturally formed into one congregation, and annexed to a single church. The same people who joined in public worship were also combined in their military expeditions; and the same arrangement, under different rulers, that had been adopted in the former capacity, was easily communicated to them in the latter. This division of a village, with the corresponding territory belonging to its inhabitants, into ten little *wards* or *districts*, probably arose in those European kingdoms which had first attained a regular form, and was afterwards extended to the Saxons in England, and to the inhabitants of other countries, who remained longer in a state of anarchy and confusion.

But while the members of every Anglo-Saxon town or village were thus intimately united, a connection of the same sort was gradually introduced between the inhabitants of a larger territory. Those who belonged to different towns or villages in the same neighbourhood had frequently occasion to assist one another against a common enemy; and in consequence of many joint expeditions, directed by a sense of mutual interest, were induced to

form a regular association, under a permanent military officer.

The extent of these associations was at first perhaps arbitrary and variable, but was at length settled in an uniform manner, according to the system of ecclesiastical policy which prevailed both in England and in other European kingdoms. Upon the principle which has been formerly mentioned, every ten churches of a diocese were united under an ecclesiastical inspector, who in England, in contradistinction to a similar officer belonging to a cathedral or monastery, was called a *rural dean**. In like manner every ten villages or tythings, which were of the same extent with parishes, formed a military district, which obtained the appellation of a *hundred*, and its commanding officer that of a *centenarius* or *hundreder*†.

The connections of society being still farther extended, the members of different hundreds

* Kennet's Paroch. Antiq.——Burn's Eccles. Law. v. *Dean and Chapter.*

† Hundredus autem Latinè, says Ralph Higden, sive Cantredus, Wallicè et Hibernicè, continet *centum villas.* [Polychronicon, lib. i.]

were also associated for their common defence, and fell under the direction of a greater officer, called the *heretoch*, a title which, in the Saxon language, is synonimous with that of duke, and which appears to have been originally given to some of those leaders in the Heptarchy, who afterwards assumed the title of kings. The districts belonging to these heretochs, which were greater or less according to accidents, and had been varied on different occasions, were gradually ascertained and established, so as at length to correspond entirely with the territories that were placed under the ecclesiastical jurisdiction of the several bishops. These districts were called *shires;* and the officer who presided over them seems, at a later period of the Anglo-Saxon government, to have changed his title for that of *alder-man* or *earl*. It is a common opinion, however, that the heretoch and the alder-man were different persons, intrusted with different departments; and that the former was the chief military, as the latter was the chief civil officer of the shire.

In some parts of the country a smaller number of hundreds were associated, so as to com-

pose an intermediate district, called *lathe*, *rape*, or *trything*; and several of these districts were united in forming a shire. But this arrangement, peculiar to some shires, and depending upon the same principles with the divisions already mentioned, is of little consequence in our present view of the subject.

Such were the military institutions of the Anglo-Saxons; which appear to have arisen almost imperceptibly from the rude state of the country, from the natural divisions of the people, and from their progressive attempts in forming more extensive and permanent associations.

From the great deficiency of Saxon records, there are, concerning these institutions, many particulars, which remain in obscurity, and which have given rise to various disputes and conjectures. The earliest historians, who have said any thing upon this subject, appear, for the most part, to have lived at a period when these institutions had undergone many variations, and in several respects had fallen into disuse. They were, at the same time, ignorant annalists of a barbarous age; and their accounts, which appear to have been chiefly derived

from tradition, are short and unsatisfactory. It seems to have been uniformly imagined by these authors, that the institutions above mentioned were peculiar to the government of the Anglo-Saxons; and that they were introduced by the singular policy of king Alfred, to whom the admiration of English writers has commonly ascribed every important regulation during the Saxon period. But it is now generally known, that the establishment of tythings, hundreds, and shires, was prior, in England, to the time of Alfred; and that it was not peculiar to this country, but was probably extended over all the barbarous nations who settled in the provinces of the western empire.

With respect to the establishment of tythings and hundreds, it has been the general opinion that the former consisted of ten families, and that the latter, of course, were composed of an hundred families. That such was the exact number of families comprehended in each of these divisions, the respective names affixed to them appear to have been thought sufficient evidence.

But when we examine this opinion, after all the pains that have been taken by late writers

to render it plausible, it seems to be attended with insuperable difficulties. To divide the whole people into military parties of ten and of an hundred families, without any regard to their places of residence, would mark a degree of art and contrivance hardly to be expected in a barbarous age: not to mention that it would be a most absurd regulation, as it would frequently separate near relations, and place them under the command of different officers, instead of uniting them under one common leader, with whom they had acquired a natural connection; for as the accidental collections of kindred and acquaintance, who lived in the same village or neighbourhood, could not be regularly composed of ten families, nor of any given number, they must of necessity have been split and jumbled with strangers, to make up the several tythings into which the people were thus artificially divided. If such a regulation ever had place in England, we must suppose that it was introduced by a political projector, neglecting, for the sake of a finical regularity, to avail himself of the usual sources of authority in a rude nation, and by a legislator invested with such absolute power, as might

render him capable of enforcing measures diametrically opposite to the natural course of things; a supposition which is neither applicable to the character nor to the condition of the early monarchs of Britain.

As the institution of tythings, together with that of hundreds, and of shires or counties, was not limited to England, but had place in most, if not all of the feudal countries, there is good reason to believe that it was not derived from artificial or distant views of policy, suggested to any particular prince; but that it proceeded from a concurrence of circumstances in the European kingdoms, by which it was recommended to the great body of the people.

That a tything was originally the same thing with a village, and that it did not comprehend any precise number of persons or families, may be concluded from this, that in the ancient law-language of England the words *vill*, *town*, *decennary*, and *tything*, have all the same signification *. If a tything have the same meaning with a vill or town, it is surely impossible that it can signify a collection of ten families only, without relation to the place of their

* Blackstone's Comment. Vol. I. Introd. § 4.

residence. Should we, on the other hand, suppose that a tything was regularly composed of so many families, the members of the same tything must frequently have resided in different towns or villages; in which case it would sometimes be necessary, in describing or pointing out those persons, to mention the *town* which they inhabited, as distinct from the tything to which they belonged; and these two terms, therefore, so far from being synonymous, would come, upon such occasions, to be used in direct opposition to each other.

But what puts this matter in a yet more conspicuous point of view, is an early regulation mentioned by the English lawyers, that every tything should have a church, with celebration of divine service, sacraments, and burials*. If the limits of a tything, and of a town or village, were the same, such a regulation would naturally be established. Its establishment, on the other hand, affords complete evidence that a parish and a tything were of the same extent. But how is it possible to conceive that a parish comprehended only ten families? According to this doctrine every

* Blackstone's Comment. Vol. I. Introd. § 4.

eleventh house must have been a church, and the clergy must have composed the eleventh part of the whole people.

To obviate this objection, it is held by some authors that a family is not to be understood in a literal sense, but as comprehending all the vassals and tenants of a proprietor, who in some cases were pretty numerous. Admitting, however, this explanation in its fullest extent, it will only vary, instead of removing the difficulty. It would still be in vain to expect that a village or town should always contain exactly ten of these enlarged families, or even any number of tens; so that it would often be requisite to patch up a tything from the remnants of different towns or villages; and it would follow that these outcasts did not belong to the church in their neighbourhood, but, however dispersed over the country, and intermixed with other parishes, were united in one congregation, and were provided with a separate church and minister of their own.

The establishment of tythings, hundreds, and shires, was primarily intended for the mutual defence of the inhabitants, but it was likewise rendered subservient to other very salutary

purposes. When the people had been assembled in those meetings to engage in a military enterprize, or upon the conclusion of it to divide their booty, they had occasion to hear complaints of the injuries and disorders committed among themselves. Every feudal superior was the natural judge of his own tenants and vassals; but when a dispute had arisen between different allodial proprietors of the same tything, there was no single person possessed of sufficient authority to terminate the difference. The parties being independent of each other in point of property, and therefore masters of their own conduct, were under no necessity, in a matter of that kind, of submitting to the orders of any individual. They acted in the same manner with respect to the exercise of their civil rights, as with relation to peace and war. In both cases they considered themselves as free men, subject to no restraints, but such as arose from the nature of their confederacy, or were imposed by their common consent.

The same motives, however, which induced a village or tything to enter into joint measures for their defence against a foreign enemy, determined them also to take precautions for

composing animosities and differences among their own members. Roused by the danger of a quarrel which might be fatal to their union, and which might render them an easy prey to their neighbours, they readily interposed with all their influence to reconcile the parties, and to enforce their observance of the rules of justice. A judicial power was thus gradually assumed by every tything over the allodial or independent proprietors of which it was composed. The hundred, in like manner, came to exercise a power of determining the differences between the members of the several tythings, within the bounds of that larger district; as the meetings of the shire established a similar jurisdiction over the different hundreds comprehended in that extensive territory. These courts took cognizance of every cause, whether civil or criminal; and as they enjoyed the sole jurisdiction, in the first instance, within the respective boundaries of each, they became naturally subordinate one to another; so that from the decision of the tything there lay an appeal to the hundred, and the sentences of this latter tribunal were reviewed in the greater meetings of the shire.

These courts were held originally by all the allodial proprietors of each particular district; and the same persons had the same right of presiding in their judicial procedure, as when their meetings were called to deliberate upon military affairs.

It is probable that every kind of law-suit was at first determined in full assembly, and by a plurality of voices; but in the larger meetings of the hundred, and of the shire, it should seem that when the authority of those tribunals had been confirmed by custom, and their duty had become somewhat burdensome by the increase of business, convenience introduced a practice of selecting a certain number of their members, to assist their president in the determination of each particular cause. Hence the origin of *juries*, the precise date of whose establishment is uncertain, because it probably arose from no general or public regulation, but from the gradual and almost imperceptible changes, authorized by common usage in the several districts of the kingdom. The number of jurymen was for some time different upon different occasions; till the advantages of an uniform practice produced a general rule, which

determined that no less than twelve persons should be called in all ordinary causes*.

* The custom of choosing twelve men for distributing justice, is frequently mentioned in the Anglo-Saxon laws. Thus, in a law of king Ethelred, it is said, "Et ut habe-"antur conventus in quolibet wapentachio, et exeant seni-"ores duodecim thani, et prefectus cum iis, et jurent super "sanctuarium quod iis in manus datur, quod nolent ullum "innocentem accusare, nec aliquem noxium celare."—[Wilkins, p. 117.] In another law, ascribed to the same king, commonly called the *senatus consultum de monticulis Walliæ*, it is enacted, for the mutual benefit of the English and Welch, that controversies between them should be determined by twelve law-men, the half of whom shall be Englishmen, the other half Welchmen. [Wilkins, p. 125.]

These twelve persons correspond, it should seem, to the *Racimburgi* and the *Scabini*, who under the first and second races of the kings in France assisted in the decisions of the count and of the centenarius.

It has been supposed by some authors that neither of these were upon the footing of modern jurymen, chosen out of the free men of a district for each cause, but that both were permanent assessors of the magistrate and members of the court. See Brady's complete Hist. of Eng.—Hickes's Diss. Epistol.

But that either these twelve men, or the Racimburgi or Scabini, were permanent members of the court, appears improbable, for the following reasons: 1. Because these twelve men were chosen among the *thanes*; and it is not likely that the same persons of that rank, would subject

Concerning the institution of tythings, there is one regulation, connected with the administration of justice, that has been much taken notice of by historians, and has excited the admiration of all political writers: the members of every tything are said to have been responsible for the conduct of one another; and the society, or their leader, might be prosecuted and compelled to make reparation for an injury committed by any individual.

If we look upon a tything as regularly composed of ten families, this branch of its police will appear in the highest degree artificial and singular; but if we consider that society as of

themselves to the drudgery of being constant assessors to the magistrate. 2. The number of *Racinburgi* or *Scabini* appears to have been varied, according to the importance of the causes which they decided. This supposes a new election in each cause. 3. If there was a regular bench of assessors to the chief magistrate of a county, it is wonderful that no traces of that institution should be found at present, more especially in Scotland, where the county-courts have been continued upon the ancient footing.

Accordingly Horn, an author who lived in the time of Edward I. says expressly, in his *Mirroir de Justices*, that king Alfred put to death a number of his judges for deciding causes without a jury.

the same extent with a town or village, we shall find that such a regulation is conformable to the general usage of barbarous nations, and is founded upon their common notions of justice.

Among barbarians in all parts of the world persons who belong to the same family are understood to enjoy a community of goods, and to be all jointly subjected to the same obligations. In those early ages when men are in a great measure strangers to commerce, or the alienation of commodities, the right of *property* is hardly distinguished from the privilege of *using* or *possessing*; and those persons who have acquired the joint possession of any subject are apt to be regarded as the joint proprietors of it. At the same time, when a debt is contracted by one of several persons who have a perfect community of goods, it must of necessity be discharged from the common funds; and the obligation of every individual becomes therefore a burden upon the whole society.

After a family has been enlarged, and subdivided into different branches, their possessions are not upon this account entirely sepa-

rated, nor their notions of common property altogether effaced. Though the different families, who are thus formed into a tribe or village, reside in different houses, their neighbourhood allows them still to maintain a promiscuous intercourse; and their situation disposes them to act in concert with each other in all their important employments and pursuits. As, in their expeditions of war and hunting, they go out in a body, so, according to the primitive state of agriculture, they labour in the field, and gather in the harvest in common; and what has been acquired by their united exertions, before it is divided among them by consent, is naturally conceived to be the joint property of all.

It is no hardship, that persons connected in so intimate a manner should be liable for the obligations of one another; and when an individual has become bound to a stranger, who cannot easily know for whose benefit the debt was incurred, it seems reasonable that the creditors should be allowed to demand payment from the community, who alone have access to distinguish the rights of their particular members.

But the greater part of the debts contracted in a barbarous age arise from injuries and hostilities; for which it is usual to make atonement by pecuniary compositions; and as in such cases it commonly happens, either that the offence was originally committed by a whole village, or, if it arose from a single individual, that the quarrel was afterwards adopted and prosecuted by the other members of the community, this appears a sufficient reason for subjecting them to a share of the punishment.

Thus, by the general custom of rude nations, the vengeance of the injured party for murder and other atrocious crimes is not confined to the guilty person, but is extended to his family, and even to the whole village or tribe of which he is a member. The prosecution of claims, founded upon this general custom, makes a considerable part of the history of mankind in the early periods of society. Traces of this primitive law of nations may be discovered even in some civilized countries; where, upon account of enormous offences, the criminal, together with his innocent children, and other

relations, have been condemned to one common punishment*.

Among the Jews, when a person was found murdered in the neighbourhood of a city, and the murderer was unknown, it seems to have been thought that the punishment might with justice be extended to all the inhabitants; who are, upon that account, directed to perform an expiatory sacrifice. "And all the elders of "the city that is next unto the slain man, shall "wash their hands over the heifer that is be-"headed in the valley. And they shall an-"swer and say, Our hands have not shed this "blood, neither have our eyes seen it. Be mer-"ciful, O Lord, unto thy people Israel, whom "thou hast redeemed, and lay not innocent "blood unto thy people Israel's charge. And "the blood shall be forgiven them†."

When it is customary to demand satisfaction from a whole village for the highest personal injuries committed by an individual, it cannot appear surprising that the same privi-

* See instances of this quoted by the acute author of The Historical Law Tracts.

† Deuteron. chap. xxi.

lege should be claimed upon account of the ordinary violations of property.

I am assured, from the most respectable authority, that, in the villages belonging to the Highlands of Scotland, a rule of this kind has been immemorially established. The stealing of cattle was formerly the only species of theft from which the inhabitants of that country could suffer any great prejudice; and when stolen cattle could be traced within the district of any particular village, the inhabitants were liable to repair the damage, unless they could point out the track of the cattle, passing again without their territories. This law, which was founded merely upon long usage, remained in force at least as far down as the beginning of the present century*.

It was a custom, we are told, among the ancient Irish, "that the head of every *sept*, and "the chief of every kindred, or family, should "be answerable and bound to bring forth "every one of that sept, and kindred under it, "at all times, to be justified, when he should

* It does not seem to be supposed by historians, that the Saxon regulations concerning tythings were extended to a country so inaccessible as the Highlands of Scotland.

"be required, or charged with any treason, "felony, or other heinous crime*." The Irish law, in this as well as in other particulars, was probably analogous to that of the other Celtic nations.

From the code of Gentoo laws published in 1776, it appears that a similar regulation has been introduced among the ancient inhabitants of Indostan. If the footsteps of a thief have been traced, or if stolen goods are found, within a certain distance from any town, the thief is presumed to be concealed in it.—And whenever a robbery or theft is committed in the neighbourhood of any town or city, the *head-person* of that town or city is bound to make up the loss†.

Upon some parts of the coast of Guinea, the villages or towns, it should seem, are liable for the obligations of every sort contracted by any of their members; for we are informed, that when a person in that country neglects to pay a debt, the creditor is under no necessity of arresting the real debtor, but, in the district where he resides, has the liberty of seizing, at

* Spencer's View of the State of Ireland.

† Code of Gentoo laws, ch. 17. sect. 4. 6.

pleasure, such a quantity of goods as will satisfy the demand, leaving the sufferers to indemnify themselves in the best manner they can*.

About the middle of the thirteenth century, it appears that the states of Germany had very generally adopted a similar practice; which is mentioned by historians as a proof of uncommon rudeness and barbarism†.

* Hist. Gen. des Voyages. Mod. Univ. Hist.

† The following passage is quoted from Pfefel's Abrégé Chron. de l'Histoire d'Allemagne. "Je ne puis passer sous silence une autre nouveauté, qui prouve, on ne peut pas mieux, et le malheur de ces tems, et la barbarie des mœurs du siécle; c'est le droit *d'Otage*. [Jus obstagiorum] Rien de plus bizarre que ce droit. Un Souabe, un bourgeois d'Ulm, lésé par un Liegeois, ne se donnoit pas la peine de poursuivre sa partie, devant la justice ordinaire; il se contentoit de mettre la main sur le premier Liegeois qu'il pouvoit rencontrer, et le constituoit prisonnier à Ulm, c'est là qu'il faisoit juger sa cause, et *l'Otage* n'étoit point relâché que la sentence ne fût exécutée. L'histoire et les archives nous fournissent mille exemples de ces procès singuliers: et *Lehmann* rapporte que les citoyens de Spire ont fait déclarer par des lettres patentes, qu'ils n'étoient point sujets de leur Evêque, et que par conséquent l'on ne pouvoit les arrêter légitimement pour les causes que regardoient les sujets de ce prince.

The inhabitants of the same foreign country happening, at any one time, to reside in London, were formerly viewed in the same light; and any one of them might be prosecuted for the debts contracted by his countrymen. In a treaty between Edward the Second and Alphonso king of the two Castiles, it is agreed, that the merchants of Bilboa, and the other towns of Biscay, shall not for the future be arrested, nor have their goods distrained, for the debts of any Spaniard, for whom they have not become personally bound*. The small number of Spanish merchants residing in London, and the distance of their native country, made them appear as much connected as if they had been members of a single rude village or tribe.

This noted regulation concerning the Saxon tythings is therefore to be regarded as the remains of extreme simplicity and barbarism, rather than the effect of uncommon refinement or policy; and in this view, it may be observed that, in consequence of some improvement in the manners of the people, the original obligation imposed upon every tything, to

* Anderson's History of Commerce.

repair the injuries committed by any of its members, was, in a period subsequent to that which we are at present examining, subjected to certain limitations. By a law which has been ascribed to William the conqueror, but which is probably of an earlier date, we find it enacted, that, if a crime is committed by any member of a decennary, who escapes from justice, his tythingman, with two others of the same tything, together with the respective tythingmen, and two others, out of the three neighbouring tythings, shall assemble to examine the state of the fact, and if the tything to which the criminal belongs is purged by the oath of these twelve persons, it shall be freed from the obligation to pay the damage*. The progress of government, by enlarging the general intercourse of society, contributed to diminish the peculiar connexion among the inhabitants of the same village, and made it appear an intolerable hardship, that they should, without distinction, be accountable for the misdeeds of one another.

* See the laws collected by Roger de Hoveden, and said by this author to have been made by William the conqueror in the 4th year of his reign, with the advice of his barons, nobles, wise men, &c.

Beside the two branches of business which I have mentioned, the defence of the country and the decision of law-suits, that were canvassed in the Saxon tythings, hundreds, and shires, those meetings were accustomed to deliberate upon matters of still greater importance. They received complaints concerning such abuses in administration, or grievances, as had occurred within their several districts, and by introducing new regulations endeavoured to apply a proper remedy. Thus the heads of families or independent proprietors of every village, or tything, exercised a legislative power within their own liberties, but were liable to be controuled, in this respect, by the meetings of the hundred, which enjoyed the same power in a larger territory; and both of these were subordinate to the meetings of the shire, which possessed a legislative authority over all the hundreds of that extensive division How the meetings of the shire were liable to be controuled by a still greater assembly, I shall now proceed to inquire.

CHAPTER VII.

Of the Wittenagemote.

BY the gradual extension of intercourse between the different families or tribes of the Anglo-Saxons, and by the advancement of their political union, the inhabitants of larger territories were led to assemble for the regulation of their public concerns. As the freemen or allodial proprietors of a tything, of a hundred, and of a shire, determined the common affairs of their several districts, and were convened for that purpose by the tythingman, the hundreder, and the alderman; so the union of people belonging to different shires produced a greater assembly, consisting of all the allodial proprietors of a kingdom, and summoned by the king, the great military leader, and chief magistrate of the community. This national council received the appellation of the *mickle-mote*, or *Wittenagemote*.

During the continuance of the Heptarchy, each of the Saxon kingdoms had its own Wittenagemote; and there can be no doubt that

those national councils, though sometimes they might act in concert, were independent of one another. But when all the dominions of the Anglo-Saxons were reduced under one sovereign, the Wittenagemotes of each particular kingdom were dissolved, and there was formed a greater assembly of the same nature, whose authority extended over the whole English nation. The circumstances attending this important revolution are lost in obscurity; and we have no means of discovering with certainty, whether it was produced by the mere influence of custom, or by an express regulation. It is probable that when Egbert had subdued the different states of the Heptarchy, the members of every separate Wittenagemote were invited to that great council of the monarchy which was then established; and that, in consequence of this, they would scarcely think it worth while to continue their attendance in those inferior meetings with which they had formerly been connected.

Of the particular class or description of persons who composed the Saxon Wittenagemotes, either in the respective kingdoms of the Heptarchy, or in the monarchy which

was formed from the union of these, the historians of that period have given us little or no direct information. But, from a variety of circumstances, it appears highly probable that those ancient assemblies were composed of all the members of the community who enjoyed landed estates in full property; that is, of all those who had the appellation of the *Greater Thanes.*

1. From the state of the country after the Saxon conquest, these persons, being independent with respect to their possessions, were masters of their own conduct, and were under no necessity of adopting public measures to which they had not consented, or upon which they had not at least had an opportunity of deliberating and giving their suffrage. Without their advice and concurrence, therefore, the king could seldom adventure to transact any important national business; and from the frequent practice of consulting them, they were gradually formed into a regular assembly, and became an established branch of the constitution. The rest of the inhabitants were either *vassals*, whose benefices, if not held precariously, were secured to them only for a

limited period; or *peasants*, whose condition was yet more dependent and servile. That the king should find it necessary or expedient to summon either of these classes of people to his great council, cannot easily be conceived. Their support and assistance might be expected, of course, in the execution of every measure which had been approved by their superiors; and therefore the voice of the allodial proprietors of land might, on every public emergency, be regarded as the voice of the nation.

2. The usual designations given, by ancient authors, to those who sat in the Saxon Wittenagemote, seem perfectly to coincide with this idea of its constituent members. The persons present in that assembly, when they happen to be particularly specified, are commonly said to be the *bishops and abbots*, together with the *aldermen*, the *chiefs*, the *nobles*, or the leading men of the kingdom*. These expressions are peculiarly applicable to the allodial proprietors of land. It is to be observed, that in

* Principes, optimates, magnates, proceres, &c. See Spelman on Parliaments—Dr. Brady, Answer to Petyt—and the series of great councils before the conquest. Tyrrell's Bibliotheca Politica, Dial. 6.

those times there was no such personal wealth as could create any authority; neither was there any distinction between what is now called a nobleman and a gentleman; but every individual, possessed of landed property, was a sort of leader, and maintained a degree of influence and rank corresponding to his fortune. The dignified clergy were distinguished by their profession, as the alderman, or governors of shires, were by their office; for which reason, in speaking of the persons who composed the Wittenagemote, those two classes of men are frequently mentioned in particular, while the other proprietors of land are only pointed out by a general appellation expressive of their condition.

3. The same conclusion receives an additional support from the obvious analogy between the Wittenagemote, and the inferior meetings of the tythings, hundreds, and shires. These inferior meetings were plainly of the same nature with the great national council. The former deliberated upon the public affairs of the several districts to which they belonged: the latter, upon the public affairs of the whole nation. Both of these appear to have arisen

from the same circumstances; and probably the one was introduced in imitation of the other. It was because the chief magistrate of every inferior district had not, of himself, sufficient authority to execute public measures, that he was accustomed to call meetings of those inhabitants whose concurrence he thought was expedient; and it was upon the same account that the king was accustomed to assemble the great national council. There is great reason to believe, therefore, that all these meetings were constituted in the same manner; and, as it seems to be universally agreed, that the court of every tything, hundred, and shire, was composed of the respective proprietors of land in those districts, it can hardly be doubted that the constituent members of the Wittenagemote were the people of a similar description throughout the whole kingdom.

Lastly; The probability of this opinion is farther increased, when we examine the state of the national councils, which existed about the same time in the other European kingdoms. In all those kingdoms, the sovereign was under the necessity of transacting the more

important parts of the public business with the concurrence of a great proportion of his subjects; and the councils which he convened for this purpose appear, in every country, to have been composed of that part of the people who enjoyed a degree of influence over the rest of the community. Thus in France, the country of modern Europe in which the greatest number of particulars concerning the primitive government has been transmitted to us, the supreme concerns of the kingdom fell under the deliberations of the assemblies of the *field of March;* so called from the time of their principal meetings. From the accounts delivered by some of the French writers, these councils appear to have been composed of all the free men of the nation. According to others, they consisted of the leading men or nobility*. These accounts are, at bottom, not very different. In the early periods of the French monarchy, no person could be denominated free, unless he had the independent property of land; and every

* See Observations sur l'Hist. de France par M. l'Abbé Mably—and Memoires Historiques du Gouvernement de France, par M. le Compte de Boulainvilliers.

landed proprietor was, in reality, a sort of chief or nobleman*.

In consequence of the disputes between the king and the people, that took place in England after the accession of the house of Stuart, there arose two political parties; the followers of which have maintained very opposite opinions concerning the constituent members of the Anglo-Saxon Wittenagemote. The supporters of the prerogative, in order to shew that the primitive government of England was an absolute monarchy, and that the privileges enjoyed by the people have all flowed from the voluntary grants and concessions of the sovereign, were led to assert that the original members of the Wittenagemote were persons under the king's immediate influence and direction; from which it was concluded, that, so far from being intended to controul the exercise of his power, this council was called of his own free

* Hinc haud ægre colligere est, unde nostri appellarent parliamenta procerum totius regni conventus.—Du Cange v. Parliamentum. The Salic laws are said to have been made with the consent of the *proceres* or the *optimates*.—And even charters from the crown usually bear, that they were granted *cum consensu fidelium nostrum*,—or *in nostra et procerum presentia*. Mably, ibid.

choice, for the purpose merely of giving advice, and might of consequence be laid aside at pleasure. Hence it was contended, that beside the bishops and abbots, and the aldermen, both of which were supposed to be in the nomination of the crown, the other members of the Wittenagemote, who received the appellation of *wites* or *wise men*, were the lawyers or judges of the kingdom, who sat in the privy council, and were likewise in the appointment of the sovereign*.

Those writers, on the contrary, who defended the rights of the people, appear, from their eagerness in combating this opinion, to have been betrayed into the opposite extreme. In their endeavours to prove the independent authority of the ancient national council, they were induced to believe, that, from the beginning, it had been modelled upon the same plan as at present; and that it was originally composed of the nobility, the knights of shires, and the representatives of boroughs †.

* Hume's Hist. of England, Appendix to Anglo-Saxon period.

† Sir Robert Atkyns' Power, Jurisdiction, and Privileges of Parliament,—Petyt, Rights of the Commons as-

It requires no great sagacity or attention, at this day, to discover that both of these opinions are equally without foundation. They may be regarded as the delusions of prepossession and prejudice, propagated by political zeal, and nourished with the fondness and credulity of party attachment. Nothing can be more improbable, or even ridiculous, than to suppose that the lawyers or judges of England were, immediately after the settlement of the Anglo-Saxons, a body of men so considerable as to compose the principal part of the Wittenagemote, and, from a title peculiar to themselves, to fix the general denomination of that great assembly. In a very rude age, the business of pleading causes is never the object of a separate profession; and the deciding of law-suits does not form a characteristical distinction in the chiefs or leading men, who are occasionally employed in that manner. We may as well suppose that, in the period of English history now under consideration, the Anglo-Saxon *wites*, or *wisemen*, were the physicians,

serted.—Jani Anglorum facies nova.—Argumentum Anti-normanicum.—Tyrrel's Bibliotheca Politica.—Lyttelton's Hist.

the surgeons, and apothecaries, or the mathematicians, the chymists, and astronomers of the country, as that they were the retainers of the law. We have surely no reason to believe that the latter were, by their employment, more distinguished from the rest of the community than the former.

Besides, if the *wites* are understood to be judges and lawyers, it will follow, that the ancient national assembly was often composed of that class of men exclusive of all others; for, in ancient records, it is frequently said, that laws were made, or public business was transacted, in a council of *all the wites* of the kingdom. But it is universally admitted, that the bishops and abbots, as well as the aldermen or governors of shires, were members of the Wittenagemote; from which it is a natural inference, that these two sets of people were comprehended under the general appellation of *wites*.

This may easily be explained. The term *wite* signifies, primarily, a man of valour, or military prowess; and hence a man of high rank, a nobleman*. It has been used, in a

* Somner's Sax. Dict. v. *Wita.*

secondary sense, to denote a *wise man*, from the usual connection, especially in a rude age, between military skill and experience or knowledge: in the same manner as *an old man*, or *grey-headed man*, is, according to the idiom of many languages, employed to signify a ruler or governor. As far as any conclusion, therefore, can be drawn from the appellation of Wittenagemote, or council of the wites, it is likely that this national assembly comprehended neither judges nor lawyers, considered in that capacity, but that it was composed of all the leading men, or proprietors of landed estates; in which number the dignified clergy, and the governors of shires, if not particularly distinguished, were always understood to be included *.

The other opinion is not more consistent with the state of the country, and the condition of its inhabitants. It supposes that in England, soon after the settlement of the Anglo-Saxons, the lower ranks of men were so

* By a law of king Ina, it is enacted, that if any person fought in the house of an alderman, *or of any illustrious wite*, he should pay a fine of sixty shillings. See Wilkin's Anglo-Saxonica, Leges Inæ, c. 6.

independent of their superiors, as to form a separate branch of the community, invested with extensive political privileges. This opinion supposes, in particular, that the mercantile part of the inhabitants were become a distinct order of the people, and had risen to such opulence and authority as entitled them to claim a share in the conduct of national measures. There is not, however, the least shadow of probability in this supposition. Whatever improvements in trade and manufactures had been made in Britain, while it remained under the provincial government of Rome, these were almost entirely destroyed, by the convulsions which attended the Saxon conquest, and the subjection of a great part of the island to the dominion of a barbarous people. The arts which remained in the country after this great revolution, were reduced to such as procure the mere necessaries, or a few of the more simple conveniencies of life; and these arts were hardly the objects of a separate profession, but were practised occasionally by the inferior and servile part of the inhabitants. How is it possible to conceive, in such a state of manufactures, that the trading interest

would be enabled to assume the privilege of sending representatives to the great council of the nation? Even in those European states, whose advancement in arts was much earlier than that of the Anglo-Saxons, the formation of the trading towns into corporations was long posterior to the period we are now examining; yet this event must have preceded their acting in a political capacity, and, consequently, their being represented in the national assembly.

But, independent of this consideration, which can hardly fail to produce conviction in such as are well acquainted with the early history of modern Europe; the fact in question may be determined in a manner still more decisive and satisfactory. If the representatives of boroughs, and the knights of shires, were constituent members of the ancient Wittenagemote, it is inconceivable that no traces of their existence should have been preserved in the annals of the Saxon princes. From the numerous meetings of that assembly, which are mentioned in many authentic records, and of which accounts are given by historians, who lived either in that period, or not long after it, a variety of expressions must have occurred, by

which the fact might be fully ascertained. Had it been a common practice for the towns and shires to choose representatives in the national assembly, is it possible to believe that this practice would never once have been alluded to upon any occasion whatever; or that, when mention is made so frequently, of the bishops and other dignified clergy, of the aldermen, of the wites, or leading men, who sat in this meeting, another part of its members, consisting of a class of people totally different from the former, would in no case, either from accident or design, have been pointed out in clear and unequivocal terms? It cannot be disputed, however, that, notwithstanding the most diligent search into our ancient histories and records, by men of great industry and learning, and eager to prove their hypothesis, not a single unambiguous expression, to that effect, has ever been found; and this observation is not limited to the time of the Heptarchy, but may be extended from the settlement of the Anglo-Saxons to the Norman conquest.

The attempts to prove that there were representatives of boroughs and shires in the Wittenagemote consist, for the most part, in

giving a forced interpretation to certain vague and general phrases, which happen to be employed by ancient authors, concerning the members of that assembly. The word *alderman*, for example, denoting a *ruler*, may be extended to the ruler, or chief magistrate, of a town, as well as of a shire; and therefore it is contended, that when the aldermen are mentioned in old records, as a constituent part of the national council, we are to understand the representatives of boroughs, as well as the governors of shires. It is, in like manner, asserted that, by chiefs, or leading men, and by wites, or wise men, the persons chosen to represent the commons are as properly described, as the nobility, or proprietors of land*.

According to this reasoning, the representatives of the commons, in every shape, and of every description, as they exist at present, though not separately mentioned, are included in almost every designation, applied to the ancient members of the Wittenagemote. How

* Tyrrell's Bibliotheca Politica, Dial. 6.—It seems to be the opinion of this author, however, that the existence of the knights of shires, in the Saxon Wittenagemote, is more doubtful than that of the representatives of boroughs.

far this mode of argument may be extended it is difficult to say. The *aldermen* and the *wites* have, each of them, the capacity of lord Peter's *bread*, containing the quintessence of beef, mutton, veal, venison, partridge, plum-pudding, and custard.

In the accounts given by ancient authors of those that were called to the national council, mention is made, in some cases, not only of the bishops, abbots, aldermen, and chiefs, but also of the *people*; and the persons present are sometimes distinguished by the appellation of *a great multitude**.

* Thus in the record of a Wittenagemote held by Ethelbert in 605, it is said, "*Convocato igitur communi concilio* "*tam cleri quam populi.*"

A general council is said to have been held by Ethelwolf, in 855, *Præsentibus et subscribentibus Archiepiscopis et Episcopis Angliæ universis, nec non Beorredo rege Merciæ, Edmundo East-Anglorum rege, Abbatum et Abbatissarum, Ducum, Comitum, Procerumque totius terræ, aliorumque fidelium infinita multitudine, qui omnes regium chirographum laudaverunt, dignitates vero sua nomina subscripserunt.*

Canute, in the fifth year of his reign, is said to have held a great council of his archbishops, dukes, earls, abbots, *cum quamplurimus gregariis militibus, ac cum populi multitudine copiosa.*

In some other instances, expressions of a similar nature occur; such as *vulgi consensus*, and *populo audiente et videnle.*

But it cannot escape observation, that if this proves any thing, it will prove too much: it will prove that all the inhabitants, even those of the lowest rank, instead of sending representatives, were personally allowed to vote in the national council. By the appellation of *the people* it appears that, on some occasions, the lay-nobles are understood, in opposition to the dignified clergy; and on others, the ordinary proprietors of land, in opposition to those of distinguished opulence. There is, at the same time, good reason to believe, that the multitude, said to have been present at some of those meetings, was partly composed of mere spectators, who might possibly, by their acclamations, testify their approbation of the measures proposed.

[See the authors above quoted—as also Gurdon's History of the Parliament.] In many of these expressions a distinction is clearly pointed out between the members of the meeting and the inferior people that were merely spectators. It ought also to be remembered, that the greatest number of those general phrases, quoted for proving that the commons were represented in the Wittenagemote, are used only by writers after the Norman conquest; who, in translating Saxon laws, or in speaking of Saxon usages, may be supposed to accommodate their language to the ideas prevalent in their own times.

There is produced an instance of a Wittenagemote, held by one of the kings of Mercia, in the year 811, in which a royal charter is said to have been signed before "the Mercian "chiefs, bishops, leaders, aldermen, *procura-* "*tors*, and relations of the sovereign, together "with Cuthred the king of Kent, and Suthred "the king of the East Saxons, and all those "who were present in the national council*." As the members of the Wittenagemote had immemorially the privilege of appointing any person to act for them in their absence, it has been supposed, with great probability, that the *procurators* here mentioned were the proxies of absent nobles. In support of this conjecture, it is observed, that they are placed next in order to the nobles, and immediately before the king's relations†.

* *Merciorum Optimates, Episcopos, Principes, Comites,* PROCURATORES, *meosque propinquos, nec non Cuthredum regem Cantuariorum, atque Suthredum regem Orient. Saxon. cum omnibus qui testes nostris synodalibus conciliabulis aderant.* [Annals of Winchelcomb.]

† Gurdon's History of the Parliament.—In a charter of Athelstan, the *procurators* are also mentioned. But this charter was not granted in the Wittenagemote. [Ibid.]

But although there is no ground for believing that the representatives of the commons were ever admitted into the Wittenagemote, there can be as little room to doubt that, when the different Anglo-Saxon kingdoms were first united under one monarch, it composed a very numerous assembly. As, upon the settlement of the Saxons in Britain, few persons were in a condition to occupy large estates, the number of allodial proprietors was proportionably increased. It is probable that the estates of the greater part of individuals extended to no more than a *hide* of land, or what could be cultivated by a single plough, and that this property constituted the primitive qualification for voting in the several Wittenagemotes of the Heptarchy. We hear of no particular limitation in this respect, either in the reign of Egbert, or in any preceding period.

It has been imagined by some authors, that the privilege of sitting in the Wittenagemote was originally confined to such as possessed forty hides of land; a property of great extent, which few individuals, it is natural to suppose, could have an opportunity of acquiring; whence it seems to be inferred, that a small part only

of the landed gentry were admitted into the councils of the sovereign*. This opinion is founded upon a passage in the register of Ely, which mentions a distinction in point of rank, enjoyed by such of the nobles as possessed estates amounting to forty hides of land. But this passage refers to the state of the kingdom in the reign of Edward the confessor, when property had been subjected to the most important revolutions, and government had widely deviated from its original institution. No inference can thence be drawn, concerning the primitive constitution of the national council; which must have arisen from the state of the inhabitants at the time when it was framed. How far the authority above mentioned is sufficient to justify that conclusion, with respect to the later periods of the Anglo-Saxon government, will fall to be afterwards examined. It is therefore highly probable that the Wittenagemote of the Anglo-Saxons was originally so constituted, as to admit a great proportion of the people into a share of its

* Dugdale's preface to his Baronage. Hume's Hist. of England, appendix to Anglo-Saxon period.

deliberations; and it merits attention, that even such of the inhabitants as were excluded from this assembly, were either the slaves, or the tenants and vassals of those who sat in it. The former were thus placed under the protection of the latter. Men of inferior rank, though not formally represented in the national council, enjoyed, therefore, a degree of security from the influence of their master or superior, who had an interest to defend them from every injustice but his own, and whose jealousy was ever watchful to guard them from any oppression of the sovereign.

The *powers* exercised by the Saxon Wittenagemote were such as might be expected from the independent situation, and the opulence of its members. It possessed a similar authority over the whole kingdom, to that of any tything, hundred, or shire, over its own subordinate division. In general the Wittenagemote seems to have taken under its cognizance all those branches of government, which were of sufficient importance to merit its attention, and which, at the same time, could be directed, in consistency with the de-

lays arising from the deliberations of a numerous assembly.

1. It exercised, first of all, the power of providing for the defence of the kingdom, and of determining the public military operations*. This was, in all probability, the primary object in calling that assembly; and for which, according to the most ancient custom, it was regularly held twice in the year; in the spring when the seed-time was over, to resolve upon such expeditions as were thought expedient; and, in the autumn, before the harvest began, to divide the plunder. A people so rude as the early Saxons had little other business of importance but what consisted in the sowing and reaping of their grain; and were generally disposed to employ the greatest part of the summer, either in private rapine, or in hostilities against a foreign enemy. In the other kingdoms of Europe, the same seasons were observed for the meetings of the national council. We are informed that, in France; the vernal meetings were originally in the be-

* Seldon's Notes on Gov. of England, collected by Nath. Bacon, part i. chap. 20. and the authorities referred to

ginning of March; but that afterwards, from greater attention, it should seem, to the cares of husbandry, they were delayed till the first of May*.

It may here be worth while to remark, that the power of declaring peace and war, which belonged indisputably to the Saxon Wittenagemote, affords complete evidence that its members were allodial proprietors of land; for, upon the supposition of their being the vassals of the crown, they must have been bound, when called upon, to attend the sovereign in war, and consequently their consent would not have been requisite in undertaking any military enterprize.

The same authority, by which military enterprizes were determined, made likewise a provision for carrying them into execution. As from the circumstances of a rude nation, every man was in a condition to furnish a number of soldiers proportioned to the extent of his property; it was a general law in the Saxon government, that the proprietors of land should be rated, for military service, ac-

* This change is said to have been made about the beginning of the second race of the French kings.

cording to the number of *hides* which they possessed; and if any person refused to contribute his proportion, he was liable to forfeit his possessions, and to be deprived of the public protection.

The erecting and repairing forts and castles, as a defence against the sudden incursions of an enemy, and the maintaining a free communication, by roads and bridges, between the different parts of the kingdom, were objects of police which, in the same view, attracted the notice of the Wittenagemote, and for which individuals were assessed in proportion to their wealth. The magnificent works of this nature, which were executed by the Romans, in all the provinces of their empire, contributed much to facilitate the progress of their arms, and to establish their dominion over the conquered people. From their example, it is likely that the Saxons, in Britain, as well as the other nations, who settled upon the continent of Europe, were incited to improvements of this nature which they would not otherwise have thought of.

2. When the members of the Wittenagemote had been assembled, and when they had

settled every point relating to their martial operations, their attention was frequently turned to other objects of national concern. Whatever inconveniences had been felt from the manner of conducting public business, whatever abuses had been committed in the administration of government; these were canvassed; and regulations were made for preventing the like evils for the future. It is not disputed that the Wittenagemote exercised a legislative power over the whole kingdom; and, of consequence, the power of repealing and altering the regulations introduced by the meetings of any particular tything, hundred or shire*. The imposition of taxes, the most important appendage of legislation, was likewise undoubtedly assumed by this great assembly, so far as taxes existed in that early period; but these were in a great measure unknown; the ordinary expence of government being defrayed out of the private estate of the king, and from the various emoluments annexed to the regal dignity.

* See the preface to most of the collections of Saxon laws published by Wilkins.

3. To this legislative power was added that of directing and controlling the exercise of the royal prerogative. Thus the demesnes of the crown were considered as not entirely the private estate of the king; but as in some measure the property of the public, which fell to be managed and disposed of under the public inspection. The alienation, therefore, of crown-lands, though proceeding in the name of the king, was not effectual without the concurrence of the *wites;* and hence royal charters were frequently granted in the Wittenagemote, and subcribed by a number of its members*.

The coining of money, in order to save the trouble of weighing and assaying the metals which pass in exchange, was a privilege early assumed by the king in the respective kingdoms of Europe; and even by the nobles or great proprietors of land in the territories under their jurisdiction. In the exercise of this privilege, great frauds had been committed on

* Of this privilege of the Wittenagemote there occurs a remarkable instance in the reign of Egbert, in 836. Spelm. concil. t. i. p. 340.

many occasions, by debasing the coin below its usual standard; for preventing which abuses the Wittenagemote, in England, appears to have superintended the behaviour both of the king and of the nobles, and to have regulated the coinage throughout the whole kingdom*.

The members of this great council had no less authority in the government of the church than in that of the state. That they were early accustomed to take cognizance of the established religion, appears from what is related of Edwin king of Northumberland, who being solicited to embrace Christianity, is said to have answered, that in a matter of such importance he would be determined by the advice of his wites and princes. In the Wittenagemote, all ecclesiastical laws were made; the king's nomination of bishops and other dignified clergy was confirmed; and their number, as well as the extent of their livings, was regulated.

The same national council gave sanction to the establishment of monasteries, and of the revenues with which they were endowed †.

* Wilkins leges Athelstani.

† Selden's Notes collected by N. Bacon. part 1. ch. 20. and the authorities to which this author refers.

Not contented with directing the exercise of the executive power, the nobles and wites assumed, in extraordinary cases, the privilege of calling the sovereign to account for the abuses of his administration. Of this a remarkable instance occurs in the reign of Segebert, a king of the western Saxons; who, for his tyrannical behaviour, and after he had treated with contempt the remonstrances of his people, was, by a general assembly of the nation, expelled the kingdom; and another prince of the royal blood was elected in his place. This event is said to have happened in the year 755*.

Lastly, when the members of the Wittenagemote had met to deliberate upon public business, they were accustomed also to hear complaints concerning such great quarrels and acts of injustice, as could not be effectually redressed by inferior judicatories, and to endeavour by their superior authority, either to reconcile the parties, or to decide their differences. By frequent interpositions of this nature, that great council was at length formed into a regular court of justice; and became

* Saxon chronicle.

the supreme tribunal of the kingdom; in which appeals from the courts of each particular shire, as well as original actions between the inhabitants of different shires, were finally determined.

CHAPTER VIII.

State of the Sovereign in the primitive Anglo-Saxon Government.

THE different parties of the Saxons, who invaded Britain, were each of them under the conduct of some adventurer, whose fortunes they had followed, either from personal attachment, or from a confidence in his abilities. After they had settled in the country, the same person continued to have the command of their forces, and became also the chief civil officer of the community. The longer he had remained in that high station, his possession of it was rendered more secure by the continuance of the same circumstances which had originally produced his elevation. His military talents, deriving lustre and importance from the distinguished point of view in which they were beheld, excited the admiration and respect of his followers; while the dangers with which they were surrounded, and a sense of their common interest, united them in

fighting under his banner. By every new expedition they became the more accustomed to submit to his direction; and the oftener they had found it necessary to solicit his protection and assistance, under those calamities to which they were exposed, they felt more sensibly the advantages derived from his favour as well as the inconveniences arising from his displeasure.

In the early history of the Anglo-Saxons, the leader of every separate tribe or party, is accordingly represented as possessing a permanent office, with the title of *herotoch* or duke, in place of which that of *king* was afterwards assumed.

The king was in possession of a landed estate, acquired in the same manner with that of every inferior leader, by whose assistance the conquest had been made. As the booty arising from any successful enterprize, was divided among the free people or heads of families concerned in the adventure, and, as on those occasions, each individual obtained a portion, both of land and moveables, suited to his rank and abilities; it may easily be conceived that the property accumulated, in a

course of time, by the sovereign, would be much greater than that of any one of his subjects. His estate was naturally distributed among his dependents, according to the same plan which was adopted by every other landed proprietor. A part of it was bestowed upon his kindred or free retainers, under the condition of military service; and the remainder was cultivated by his villains, or bondmen, for supporting the expence of his household. Over these two classes of people, he exercised the rights of a superior, and of a master. Throughout the rest of the kingdom, exclusive of his own particular estate, his authority was much more limited. Every allodial proprietor, unaccustomed to subjection, and supported by his own retainers, was more or less in a condition to maintain his independence; and those who had acquired considerable property, beholding with jealousy the superior dignity and pretensions of the king, were commonly ready to combine against him, either in resenting or opposing, whatever they deemed an infringement of their liberties.

The powers with which the sovereign came to be invested, either in the different states of

the Heptarchy, or in the subsequent monarchy which arose from the union of those kingdoms, were such as, in order to prevent confusion and promote the dispatch of public business, were tacitly devolved upon him, or as, from the nature of his situation, he had found encouragement to assume, and had, without opposition, been permitted to exercise. The dignity and office of the king, though higher in degree, were perfectly similar to those of the tythingman, the hundreder, and the earl; and he possessed nearly the same powers over the whole kingdom, which those inferior officers enjoyed in their own particular districts.

1. By having the command of the forces in the time of battle, the original source of his greatness, he was led to direct their movements on other occasions; to take preparatory steps for bringing them into the field; to suggest particular enterprizes, to plan the measures for conducting them, to execute treaties with foreign states, and in general to superintend the defence of the kingdom, and the whole course of its military operations.

2. In consequence of his being at the head of the military department, the king was led

also to exert his authority in suppressing internal disorders, in quelling tumults and insurrections, in restraining private rapine and violence, in seizing offenders, and preventing their escape from justice; in a word, he obtained the province of maintaining the ordinary police of the country, and the security of its inhabitants.

3. As from these two branches of power, he became the prime mover, and proposer of public measures, and as, in matters of great moment, the concurrence of the Wittenagemote was necessary; he acquired, of course, the exclusive privilege of calling that assembly, and of presiding in all its deliberations. The influence which he thence obtained, with regard to its determinations, may easily be imagined. The president of every numerous assembly has many opportunities of moulding the business that comes before it, into such a shape as will promote his own designs; more especially, if by the permanent enjoyment of that office, he has leisure to form a regular plan of management; and if, by having a discretionary power of calling the particular meetings, he may regulate his motions according as

the assembly happens, in different conjunctures, to be attended by different members. But while, by these favourable circumstances, the sovereign was capable of advancing his political interest, he enjoyed the additional advantage of superior opulence and dignity; which put him in a condition to intimidate, as well as to over-reach opposition. To a prince, therefore, possessed of much prudence, and of popular talents, it was not difficult, in ordinary cases, to procure the consent of the Wittenagemote to those measures which he thought proper to suggest; and the resolutions of that assembly, while they appeared to limit and controul the power of the crown, were at bottom, very often directed by the monarch, and rendered subservient to his will.

4. As the Wittenagemote enacted laws, distributed justice in the last resort, and regulated the administration of public affairs; so the duty of enforcing the decrees and regulations of that assembly, and, in general, the executive part of the government, were naturally devolved upon the king. That great officer, who conducted the military force of the kingdom, could hardly fail to assume the province of

causing the punishments decreed against offenders to be regularly inflicted, and of compelling every individual to fulfil the decisions of the law. The same person was led to procure information with respect to the commission of heinous crimes, and to direct that they should be prosecuted before the proper tribunals. In these employments, the sovereign acted as the head and representative of the community. In the same capacity, he obtained the nomination of many inferior officers in church and state; the privilege of coining money, and of superintending weights and measures; together with the exercise of all those powers, which from their nature, could not be conveniently devolved upon a popular assembly.

These prerogatives, which from the natural course of things, and probably without any formal or express regulation, were gradually annexed to the crown, became the source of such perquisites and emoluments, as more than compensated the trouble with which they were attended. The chief executive officer, who prosecuted a crime in the name of the public, had a plausible pretence, upon the same

account, for levying the fine or forfeiture arising from the conviction of the criminal. Besides, in government, as well as in religion, the bulk of men are commonly so engrossed by the image or picture, as to forget the original, and to bestow upon the representative the sentiments due to the object it represents. Thus the sovereign, who appeared to direct, and put in motion, all the wheels and springs of government, who enforced the laws, who vindicated offences, and took upon himself the whole burden of providing for the public safety, was apt to be considered as exercising, in his own right, those powers with which the community had invested him. Those laws which he enforced were conceived to be more immediately calculated for his own benefit: those officers whom he appointed were looked upon as the servants of the crown: and those crimes, which he prosecuted and punished, were regarded as crimes committed against him in particular, for which he was, therefore, entitled, of himself, to demand reparation.

The public revenue of the Anglo-Saxons, therefore, by which the rank of the sovereign was maintained, and out of which the various

expences of government were defrayed, consisted almost entirely of two branches; the original demesnes of the king, acquired in the same manner with the private estate of each allodial proprietor; and the various forfeitures and fines, whether of land or moveables, which, from time to time accrued, or were transmitted to him, as the head of the community. From this latter source he derived a continual accumulation of wealth.* The disorder and violence, that prevailed so universally, gave occasion to the forfeiture of many rich individuals; and the king was commonly disposed to neglect no opportunity of seizing and improving such favourable conjunctures. In the greater part of crimes, as it frequently happens in the infancy of government, the criminal was not punished in a manner adequate to the purposes of public justice, but was admitted to atone for his offence, by making a pecuniary composition with the sufferer. In those cases, the king exacted a composition as well as the private party; and the profits arising to the crown, from the innumerable fines and amerciaments, to which this gave occasion, were one great cause of the

long continuance of that imperfect mode of punishing offences.

In this early stage of the constitution, the revenue above mentioned was sufficient for all the charges of public administration; which were then inconsiderable. There was no mercenary army to be paid by the king. The judges were either willing to determine differences among individuals, and to take cognizance of crimes, without any consideration for their trouble; or they obtained a compensation by exacting fees from the parties who came before them. Taxes therefore were almost entirely unknown. Their introduction belongs to the history of a more advanced period of society.

But even this primitive revenue of the crown appears to have laid a foundation for the Wittenagemote to interfere in the disposal of it; since the estate, acquired by the king, in the character of the chief executive officer, and as representing the community, was, in a proper sense, the estate of the public. This conclusion was not, indeed, applicable to the whole, though it undoubtedly was to a considerable part of the royal demesnes. But it was not

the genius of that age to make nice distinctions; and the interposition of the national council, in the management of some branches of the crown revenue, might easily be extended to others that were placed in different circumstances.

We find that, not only in England, but in the other states upon the continent of Europe, the arrangements which took place in the management of the king's household, and private estate, had necessarily great influence upon the government of the kingdom. According as the sovereign advanced in opulence and dignity, he was led to employ a greater number of servants in the several branches of his domestic economy; and the same persons, who enjoyed the chief confidence of their master in that private capacity, became, in course of time, his ministers in conducting the business of the nation. In all the European feudal kingdoms, the management of the king's household was anciently divided into five principal departments, and fell under the inspection of so many great officers.

1. The first of these was the *steward*, or master of the household, called, upon the

continent, the *major domo*, the *mayor of the palace*, or *seneschall*; who had originally the care of the king's table. Upon him was naturally devolved the business of gathering in the rents of the crown lands: for, as those rents were all payable in kind, and were intended for immediate consumption, it was most convenient, that they should be delivered into the hands of that person by whom they were afterwards to be laid out for the support of the king's family.

We may easily believe that, from the nature of his office, the master of the houshold was in a condition to acquire much influence over all the tenants and vassals of the crown. He was the person with whom they were obliged to settle their accounts; and who, from his minute acquaintance with their circumstances, was the most capable of giving his master information concerning them. He was, therefore, the person most likely to be employed in adjusting their differences with one another; and in consequence of his being the deputy judge upon the royal demesne, he came, at a subsequent period, to be entrusted

by the crown, with a similar power over the whole kingdom*.

2. As the collection and management of the victuals, with which the king's table was supplied, fell under the direction of the steward; so the care of the liquors was committed to a separate officer, the *cup-bearer*, or *butler*. In all the Gothic nations, persons of wealth and distinction lived in great splendor, and were much addicted to drinking; for which reason, it is not surprising that the accommodation of the sovereign, in this respect, was

* Spelman, v. major domo. This author supposes three different orders of *major domo* in the houshold of the Gothic monarchs. The first, who had the care of the king's table: the second, who presided over the whole houshold: and the third, who was employed under the king as chief executive officer of the kingdom. It seems evident, however, that these officers were originally derived from one, who, as he became great, appointed deputies to discharge the inferior branches of duty incumbent upon him.

In England the steward, in the king's houshold, is mentioned under the name of *Oeconomus* as early as the year 749. [See discourse on this office by Mr. Thynn in Hearne's Coll. of Antiquities.] But he does not seem to have acquired great power, as a minister of the crown, till the Norman conquest. [See same collection.]

exalted into a separate employment, and became an object of suitable importance.

3. The care of the chambers was committed to a third officer, the *chamberlain;* whose business it was to superintend the *lodging* of his master's family. As this officer was entrusted with whatever required to be locked up in the house, for the future service of the houshold, he seems, upon this account, to have become the keeper of the wardrobe, and, at a subsequent period, when the crown rents were paid in money, the king's treasurer or superintendant of the finances*.

4. Another of the king's principal servants obtained the inspection of the stable, and was denominated the *comes stabuli*, or *constable*. When, by the keeping of many horses, this department was rendered extensive, it appears to have been divided into two branches; the one belonging to the chief groom, or constable; and the other to the *mareschal*, or smith. It is difficult to mark the period when this divi-

* It is probable that the butler [pincerna] was, for a long time, not separated from the steward; and in the early history of England neither he nor the chamberlain seem to have been much distinguished.

sion was completed: nor is it an easy matter to ascertain the relative degrees of importance and rank which might then be annexed to these two kindred employments.

When the use of cavalry in war became frequent, we may easily suppose, that the persons, who had been accustomed to rear and manage the king's horses, would stand forth, as claiming superior distinction, and as having a peculiar title to be consulted. They were thus employed, under the sovereign, in conducting that important part of the troops; and, by an easy transition, acquired a jurisdiction in such controversies, as were either of a military nature, or had arisen in the army while it remained in the field*.

5. The writing of the king's letters, and the executing of the charters, or other deeds, that issued from the crown, became also the subject of a distinct occupation, that of the *secretary*. In those times, when the clergy had acquired great influence, and when a pro-

* This officer was known to the Anglo-Saxons under the name of *Stallarius*. Spelm. Gloss. v. Constabularius. The mareschal seems to have been considered as the deputy of the constable.

ficiency in the art of writing supposed an uncommon degree of literary education, the only person likely to be qualified for this employment was the *chaplain*; who might be considered as, in some degree, the keeper of the king's conscience; and who, from the nature of those religious offices which he performed could seldom fail to acquire the confidence of his master.

When signatures were introduced, for ascertaining the authenticity of writings, the office of keeping the king's seal, and of appending it to his deeds, was committed to the same person who had been employed in writing them.

As in determining law-suits, it was found expedient, in many cases, to take down the sentence of the judge in writing, the secretary was naturally employed for this purpose; and became keeper of the records of the king's court. From this branch of his duty, he got the appellation of *chancellor*; which is said to have originally denoted a *scribe*, or *notary*; being derived from *cancella*, the place under the Roman government, allotted to persons

of that profession for carrying on their business*.

As this arrangement in the domestic administration of the sovereign, supposes considerable wealth and magnificence; it was probably of a later origin in England than in several of the kingdoms upon the continent. It is reasonable to suppose that the whole of the king's houshold was at first committed to one principal servant; whose business having been, by little and little, augmented and rendered more burdensome, was at length divided into these five different departments. A similar plan of administration, in a more limited sphere, was adopted by every great landed proprietor; who naturally multiplied his chief domestics, in proportion to the extent of his wealth; and often followed the example of the king, by dividing the affairs of his houshold into the same number of branches †.

The longer these great officers had been

* This officer is clearly distinguishable in the Anglo-Saxon government. Spelm. v. Cancellarius.

† Pasquier in speaking of these great officers of the

established, they rose to higher degrees of consideration; and their authority was farther extended, from the superintendence of the king's houshold, to the direction and management of the kingdom. As, for the most part, they were originally chosen by the sovereign, upon account of their superior wealth, or abilities, which rendered them capable of supporting his dignity in the execution of the business committed to them; so the trust and confidence which he reposed in them, together with the share of public administration which they enjoyed, afforded them numberless opportunities of augmenting their private fortunes, and of increasing their influence. In proportion to their advances in wealth and

houshold observes, that they were gradually established in the families of the great lords and gentlemen. "Parquoy "estoient dessus tous, cinq estats plus estimez, le chance- "lier, grand chambellan, grand maistre, grand eschançon, "que nos anciens appelloient grand bouteéller, et con- "nestable. Nous estant par cecy monstrée une grand "œconomie: car aussi n'y a il maison qui vueille tant soit "peu parôitre, en laquelle ces cinq estats ne se trouvent "estre nécessaires, encore que ce ne soit avec tiltres de "telle splendeur." Recherches de la France. liv. ii. chap. 12.

power, they were in a condition to render their offices more permanent. They were originally nominated by the king during pleasure; but that superiority, which had been the inducement to their first promotion, became commonly more and more conspicuous during the continuance of their employments. It was, therefore, seldom found convenient to displace them: and, even after their decease, the heir of that estate, which they had acquired, was naturally regarded as the person best qualified, and who had a preferable claim to inherit their dignity. By long usage, these offices were thus rendered hereditary in particular families. To this observation, however, the office of chancellor, in most European countries, is an exception. As the chancellor was unavoidably a clergyman, who held his rank in the church, and the estate connected with it, only during life, he had commonly neither any opportunity of securing the office to his family, nor any desire of annexing it to his ecclesiastical dignity.

Of the influence established by the great officers of the king's houshold, the political constitution of Germany affords a remarkable

instance. When the dominions of that empire, by the conquest of large territories in Italy, and in the southern part of France, had been so enlarged as to comprehend three distinct kingdoms, the emperor was induced, in that situation, to appoint three different secretaries*. The officers of his household were, upon this account, increased to the number of seven. In the progress of the German government, the power of these great officers advanced, as that of the emperor declined; and after the imperial dignity had become entirely elective, they assumed the privilege of *proposing*, to the national assembly, the successor to the crown; from which they at length proceeded to claim the sole right of electing him. Hence the origin of that precise number of persons who composed the primitive German *electors*.

The steward was originally the officer of the greatest importance in the king's houshold;

* The first was the secretary for Germany, properly so called; the second for Italy, and the third for Arles. It is remarkable that these chancellors, having become secular princes, their offices have been attached to their ecclesiastical dignity.

because the supplying of his majesty's table with provisions was regarded as the chief concern of the family. We accordingly find that, in several countries of Europe, the person who enjoyed this hereditary office, attained a degree of rank and opulence which rendered him formidable to the sovereign. In France, the mayors of the palace, after having for a long time possessed the real power and authority of the crown, were at length emboldened to throw off the mask, and openly to mount the throne.

When the use of cavalry in war had become very extensive, and when that part of the feudal armies had the principal share in deciding the fate of battles, the constable, or marishal, was frequently in a condition to dispute the superiority with the steward or mayor of the palace. Thus, in Germany, when the throne happened to be vacant, the Elector Palatine, the mayor of the palace, was anciently appointed, for preventing the bad consequences of an inter-regnum, to be the *vicar of the empire.* But in a subsequent period, this high dignity was claimed by the elector of Saxony, the constable; and, after

violent disputes, and various determinations of the *diet*, was at last divided between those powerful competitors.

In the ages of greater civility and improvement, when, from the complicated connexions of society, its laws became numerous and of difficult interpretation, and when, from the anxiety of individuals to ascertain their rights, the charters and writings proceeding from the crown were multiplied in proportion, the secretary, or chancellor, to whom the king committed that branch of business, was invested with powers of the greatest consequence, and therefore was exalted to the highest rank.

In those opulent and polished nations which have long been reduced under an equal and regular government; in which the impartial distribution of justice is looked upon as almost a matter of course; and in which the sovereign is accustomed to govern by influence, more than by the exertion of his prerogative; in such nations, the person who presides over the public treasury, who may be regarded as the substitute of the chamberlain, becomes the great channel through which the revenue

of the state is conveyed, and by which the authority of the crown is maintained.

It is hardly necessary to remark, that this distribution of the business in the king's household, into five departments, reaches far below the simple period of the Anglo-Saxon government which we are now considering. But, on the other hand, it merits attention, that when the exaltation of the sovereign had multiplied the occupations belonging to these different branches, it became expedient, in some of them, to appoint a variety of deputies; many of whom, in particular kingdoms, rose by degrees to such consideration and rank, as to appear no longer in a subordinate station, and even to make the origin of their appointment be forgotten. This circumstance must not be overlooked in perusing the enumeration, given by many historians, of the principal officers in the court, or household, of particular princes.

From the foregoing imperfect sketch of the powers of the sovereign, as well as of the constitution and privileges of the Wittenagemote, we may be enabled, notwithstanding the darkness of our ancient history, to form an idea of

the original English constitution. How remote this was from an *absolute monarchy*, must be apparent to every one, who considers that the privilege of legislation, together with that of determining peace and war, and even that of controuling the executive power, was lodged in the national assembly. Neither can this government be deemed in a high degree aristocratical: since the national council was composed, not of a small junto of nobles, but of all the landed proprietors, comprehending a great proportion of the whole people. It seems, in fact, to be that sort of political system which is likely to be established in all rude and extensive countries; before a few individuals have accumulated so much wealth as enables them to domineer over their inferiors; and before the king, in consequence of his high station and prerogatives, has had leisure to acquire a revenue sufficient to overthrow and bear down any opposition that can be apprehended from the most opulent of his subjects. It cannot, however, escape observation, that, although the powers committed to the monarch by the early Saxon constitution were small, they were not accurately de-

fined; and that, in the exercise of them, he enjoyed, upon this account, a good deal of latitude. Accurate limitations of power, and a regular system of subordination, the fruit of experience and foresight, cannot be expected to characterize the institutions of a simple people, who are usually guided by their feelings more than by reflection, and who attend more to the immediate effects of any measure, than to its remote consequences. As the Anglo-Saxon princes were entrusted with every branch of public administration, in which the Wittenagemote did not think proper to interfere; their conduct was directed, in a great measure, by particular conjunctures, and by the different unforeseen events which accidentally required their interposition. We need not be surprised, therefore, if in perusing the history of that period, while we discover strong marks of the weakness of the crown, we should also meet with some extraordinary exertions of the prerogative, and should at the same time observe, that these were suffered to pass without censure, or even without notice. It is a common source of mistake, among political writers, to con-

sider these extraordinary exertions as proofs of the ordinary state of the government; and to adduce as an illustration of the general practice, what is only the random and casual exercise of a power, not yet brought to a regular standard. We shall now examine the changes produced in the English constitution from the reign of Egbert to the Norman conquest.

CHAPTER IX.

Of the principal Events from the Reign of Egbert to the Norman Conquest.

WHILE England, by the union of the different states of the heptarchy, was emerging from barbarism, and laying the foundation of a great and powerful kingdom, a new enemy involved her in a series of fresh calamities; and contributed to retard the progress of her improvements. The inhabitants of the northern part of Germany, who retained their ancient manners, and were still much addicted to piracy, continued to infest the coasts of Britain and France, and of such other European countries as, by some advancement in cultivation, presented an inviting prospect of plunder. About the reign of Egbert, several bands of those pirates, known by the general name of Danes, landed in England; and, after committing great ravages, were generally successful in carrying off their booty. Upon the death of that prince, whose vigour

had kept them under some restraint, their incursions became bolder and more frequent; they made their attacks in larger parties; and, having been often victorious over the forces that could be assembled against them, they were at length encouraged to form settlements in different parts of the country. From the time when the kingdoms of the heptarchy were united, to that of the Norman conquest; a period extending to about two hundred and fifty years, and comprehending a series of nineteen monarchs; the English were, with little interruption, engaged in a course of hostilities with those invaders; and subjected to perpetual inquietude and disorder. In the reign of Alfred, the grandson of Egbert, the Danish arms had been so successful, and their acquisitions had become so extensive, as to threaten an entire conquest of the kingdom.

The history of that prince exhibits a pattern of the hero and statesman, equal to whatever is recorded of ancient patriotism, and even to whatever correct fiction has been able to suggest, in order to excite admiration and esteem During the reign of Ethered, his elder brother, by whom he was unjustly deprived of the

patrimony left him by his father, he discovered neither any marks of resentment for the private injury he had sustained, nor of what prevailed so universally among the princes of that age, an ambition to possess the crown; but with uniform alacrity seconded all the public measures of the king; and, while yet at an early period of life, displayed uncommon valour and talents, in opposing the enemies of his country. When he afterwards succeeded to the throne, his magnanimity and firmness were put to a severe trial in the school of adversity. Though he had been victorious over the Danes in many conflicts; yet the swarms of those invaders multiplied so fast; and from every quarter pushed their depredations with such rapidity, that the English, throughout the greater part of the kingdom, became quite disheartened and submitted to the conquerors. His ancient subjects, the western Saxons, alone retained their fidelity, and supported the interest of their monarch: but these were incapable of resisting the torrent which broke in upon them, from the accumulated force of their enemies. After many fruitless efforts, and upon a sudden report of a new invasion

by a powerful body of Danes, that spread universal consternation, the king found himself almost entirely abandoned: and, being able no longer to keep the field, was obliged to disband his remaining adherents, and to provide for his present safety; he was even under the necessity of concealing himself by various artifices, and in mean disguises. The distresses to which he was exposed, and the private adventures which he met with, in that situation, appear not unworthy of notice; as they relate to a person of such eminence; and as the fate of England depended upon his surmounting the difficulties in which he was involved. In the garb of a common soldier he remained for some time unknown, in the house of one of his own herdsmen: upon which occasion, historians have mentioned a little incident, which exhibits a ludicrous picture of royalty placed in awkward circumstances without being degraded by them. While the king was one day sitting by the fireside, and trimming his bow and arrows, the woman of the house, who had no suspicion of the quality of her guest, happened to be toasting bread; and, having occasion to go about some other affairs,

she found, at her return, that the cakes were burned; with which being greatly provoked, she heartily scolded his majesty, telling him, that though he neglected to turn her cakes, he was always very ready to eat them.

Meanwhile the royal demesnes became a prey to the Danish forces; who being no longer restrained by the apprehension of an enemy, gave a loose to their cruelty and rapacity. Alfred, reduced in this manner, to the condition of an outlaw in his own dominions, and having collected a few faithful followers, wandered for some time from place to place, finding shelter from the woods and marshes, which covered a great part of the country, and which were of difficult access even to the natives themselves. But his principal retreat was in the middle of an extensive morass, formed by the rivers Thone and Parret in Somersetshire; which was almost entirely surrounded with water; and which afforded great plenty of fallow deer, and other wild animals fit for subsistence. In this place the king took up his residence; and erecting some fortifications, remained for near the space of a twelvemonth.

Here he had leisure to reflect upon the uncer-

tainty of human grandeur; to weigh the real value of all human enjoyments; and to revolve in his mind those benevolent and patriotic plans, by the execution of which he came afterwards to be revered by his countrymen, and has excited the admiration of mankind. From this retreat he made many secret excursions, in order to procure information or plunder, and to revive the drooping courage and spirits of his companions.

At length the earl of Devonshire, having suddenly attacked and routed a large party of the Danes, presented to Alfred a favourable opportunity of appearing once more in the open field, and of animating his subjects to hazard another attempt for the recovery of the kingdom. Amid all the difficulties and dangers to which this monarch was exposed, he appears to have uniformly discovered a mind cool and diliberate, resolute with caution, fruitful in expedients, and dexterous in executing such measures as the singular and desperate posture of his affairs made it adviseable to adopt. On this occasion he is said to have employed a stratagem, suited to the state of discipline in the armies of that age, and

which recals the memory of those military adventures related in the early periods of antiquity. In the disguise of a minstrel and fortune-teller, attended only by one companion, he visited the Danish camp; and supported the character with so much address, as to afford universal entertainment, and to pass through every quarter, not exceptng even the general's tent, without incurring the least suspicion. Having thus procured every possible information, and having, by means of a previous intercourse with his nobles, suddenly collected a great body of his subjects, he found himself at the head of a powerful army, exulting in the recovery of their monarch, and eager to be revenged of their oppressors. With this force he fell unexpectedly upon the enemy; and entirely defeated them. His victory was so complete, that the Danes were incapable of any further opposition; and in a little time after were entirely subdued. Some part of them were driven out of the kingdom; the rest were under the necessity of submitting to such terms as he thought proper to impose.

The moderation and clemency of this prince, and the prudence which he displayed in the

improvement of these advantages, were no less conspicuous, than the vigour and abilities by which they were obtained. The Danes who submitted to him were sent to reside in East Anglia, Northumberland, and some of the neighbouring parts of the kingdom, where many of their countrymen had long been settled; and they were admitted to the enjoyment of the same privileges with his other subjects. By the zealous interposition of Alfred, they were also happily persuaded to embrace the Christian religion; a circumstance necessary to remove their prejudices against the ancient inhabitants, and to unite those different tribes of people in one community.

Upon the restoration of peace, the first attention of the monarch was employed in providing a fleet, sufficient to oppose any new invasion of the Danish pirates; in erecting fortifications upon the coasts more immediately exposed to their depredations; in making regulations for assembling the inhabitants upon any sudden emergency; in rebuilding the towns that had been destroyed; and in repairing the waste and desolation which the coun-

try had suffered from a long course of rapine and violence.

To compile and publish a code of statutes, is, in a rude nation, a measure of the highest utility, for instructing an ignorant people in those rules by which they are to be governed; and accordingly we find that this has been the great object of almost all the distinguished princes of an early period. It appears that Alfred bestowed much labour and time upon a work of this nature; of which the greatest part is now lost. It is probable, that, from the various feudal institutions and customs, which had prevailed either in England or upon the neighbouring continent, he selected such as were accounted the most beneficial, and most adapted to the peculiar circumstances of his time and country; and that, having established these regulations by the authority of his great council, he endeavoured, in the most effectual manner, to produce a degree of uniformity in law and government, throughout the whole of the kingdom. We are not, however, to imagine, that all differences in the customs of different parts of the country were thus en-

tirely abolished. On the contrary, we find that, in consequence of the new settlements in the northern part of the kingdom, a multitude of Danish customs had been introduced; and that the people were now distinguished into three great branches, according to the varieties in the system of private law, established among the Western Saxons, the Mercians, and the Danes.

But the promulgation of good laws is, for the most part, and especially in a country remote from civilization, a matter of less difficulty and importance than the vigorous and impartial execution of them. When a regulation is made, the beneficial objects, which it is intended to promote, are commonly surveyed in that distant and dispassionate view which admits the full exertion of patriotic affections; but when it comes to be enforced by the punishment of transgressors, it then frequently assumes a different aspect; and the interest of the public is likely to be obscured and counteracted by the private connections, and by the partiality and prejudice of individuals: not to mention that the splendor and eclat, which accompany the temporary interpositions of the

legislature, do not descend to the unremitting and laborious attention, to the painful and invidious task, of those inferior magistrates who render the law effectual. It was here that the genuine virtue of Alfred appeared most conspicuous. From the long course of depredation to which England had been exposed, that country was become a scene of the utmost license and disorder; exhibiting, on the one hand, a people fierce and barbarous in their manners, accustomed to live by robbery and violence; and on the other, a set of nobles, in reality the leaders of different pillaging parties, abusing that authority and jurisdiction with which they were invested, by protecting their adherents from punishment, and by oppressing those who had fallen under their displeasure. Yet such was the attention of this monarch to the inferior departments of government, so great was his vigilance in examining the conduct of judges, and his rigour in punishing them for malversation in office, that, in a short time, these evils were in a great measure removed, and an equal and regular administration of justice was introduced. In one year of his reign no fewer than forty-four magis-

trates, it is said, were put to death, for misbehaviour in their judicial capacity; a proof that corruption and licentiousness had risen to an amazing pitch. There can be little doubt, that in the accounts transmitted by historians, the accuracy and regularity of the police, established by Alfred, has been greatly exaggerated; but even these exaggerations, the usual effects of wonder and admiration, may serve to convince us, that he made great improvements upon the former system. We are informed that, in order to try the success of his institutions, he caused golden bracelets to be hung up near the highway; and that no person, such was the terror of the magistrate, adventured to touch them.

By the establishment of good order and tranquillity, the people were encouraged to follow those peaceable occupations which had been totally interrupted by the preceding disorders. The king was indefatigable in his efforts to promote manufactures, and to excite the industry of his subjects; by employing artificers in great public works; by inviting foreigners to settle in the country; and by rewarding the inventors of new arts. He con-

tributed, in a particular manner, to the extension of foreign commerce, by protecting it with his fleet, and by bestowing marks of his favour upon such as became eminent for their skill in navigation.

He was no less attentive to the encouragement of literature, not only by his patronage, but also by his example. His ardour, in this respect, was the more remarkable, as it surmounted the disadvantages he lay under from the neglect of his early education; for, among the anecdotes which have come down to us concerning the private life of Alfred, it is related, that he was twelve years of age before he had been taught to read; and that he first felt a desire of being instructed, in this particular, from the recital of certain pieces of poetry, with which the queen his mother was much delighted. Prompted, however, by a strong inclination for literary pursuits, he soon became, not only a proficient in the Latin language, and in such branches of learning as were respected in that age, but even a writer of eminence, both in prose and in verse. As a poet, he seems to have employed himself chiefly in translating, or composing, *fables*, or *apologues*.

These compositions are usually the first attempts, in a rude nation, to illustrate, by simple and familiar examples, the proverbs, or maxims for the conduct of life, which observation and experience have suggested, and which, as containing important information to an illiterate people, are frequently repeated, and appealed to, in ordinary conversation. The labours of this eminent statesman appear, in that particular, to have coincided with those of the first great teacher of morality among the Greeks. It is probable that those two celebrated personages were directed in the choice of their subject by a similarity of character; and it may perhaps be suspected, that both of them were more remarkable for their philosophy and public spirit, than for their poetry.

Historians have mentioned the bodily accomplishments of Alfred, as corresponding to the extraordinary endowments of his mind. He was distinguished by the strength and activity, as well as by the dignity and gracefulness of his person; and while his dexterity and address, in martial exercises, excited universal applause, he gained the hearts of his subjects by an affable and engaging deportment.

After all, though the history of this monarch may be accounted sufficiently authentic, to afford a solid conviction of his exalted merit; some allowance, no doubt, must be made for the colouring produced by that admiration which was due to his character, and which has been heightened by the remoteness of the period in which he lived. We need not be surprised, therefore, to meet with errors and prejudices, concerning his public transactions; and in particular, to find that he was supposed to be the author of several regulations, which he only revived, or brought to greater perfection than they had formerly attained. The great changes which he produced in the state of his country, by bringing it from anarchy and confusion into a degree of order and regularity, led his countrymen, in subsequent ages, to fix their attention upon him, as the person from whom they had derived the entire model of their constitution. He is thus held, by many historians, to have first divided the kingdom into tythings, hundreds, and shires, and to have introduced a peculiar system of policy connected with those divisions; though it seems now to be clearly proved, that these regulations

existed in England before his time, and that they extended to other European kingdoms. The institution of *juries* has, in like manner, been ascribed to this monarch; though there is good reason to believe that it arose from the general situation of the Gothic nations; and that it had a very early establishment in all of them. Alfred, in a word, has become the English Lycurgus; and his interposition is the great engine which politicians have employed for explaining the origin of such particulars, in the English government, as have excited uncommon attention, and are too remote, in their beginnings, to fall within the limits of authentic history.

For near eighty years after the death of that prince, England appears to have been successfully defended against every foreign invasion; though she experienced a variety of disturbances, occasioned by the domestic quarrels and insurrections of the Danes and other inhabitants of the country. During this period we may distinguish the reigns of Edward the elder, the son of Alfred, of Athelstan, and of Edgar, as remarkably vigorous; and as filled with exploits, which, if they make no very splendid

figure in the general scale of historical events, were, however, of considerable consequence to the peace and internal tranquillity of the kingdom.

Those princes are said to have adopted a measure, which, in that early age, appears extremely singular. They are said to have kept in pay a regular body of troops, collected from their Danish subjects; whose military character, it seems, was superior to that of the other inhabitants. Though the bulk of the people were not unfit for war, and, by their ordinary employments, were not hindered from taking the field upon very short preparation; yet the numerous piratical invasions to which they were exposed, and by which they were held in continual warfare, suggested the same sort of military establishment that has been found convenient in all civilized nations. The Danish families were employed, in preference to the English, from the same policy, which, in later times, made the inhabitants of Switzerland be engaged in the service of many European princes. As those mercenaries, however, were quartered about the country, and were probably not much under the controul of the

civil magistrate, they were guilty of many irregularities, and rendered themselves universally odious. They possessed all the power, and discovered, we may suppose, all the insolence of a standing army; unrestrained by the watchfulness of a regular government, or by the influence of civilized manners. Hence the appellation of a *lurdane*, or *lord-dane*, which was bestowed upon them, came to be used as a term of reproach; and signified an idler and oppressor. Their situation led them, at the same time, to seek distinction, by the superior elegance of their dress and behaviour; and we are told, that they were accustomed frequently to change their cloaths, to comb their hair once a day, and to bathe or wash themselves every Sunday. By these effeminate arts they became the favourites of the women; and were so successful in their gallantries, as to debauch the wives and daughters of many noble families*.

In the reign of Ethelred, a weak and pusil-

* "Habebant etiam ex consuetudine patriæ unoquoque "die comam pectere, sabbatis balneare, sæpe etiam vesti- "turam mutare, et formam corporis multis talibus frivolis "adjuvare; unde et matronarum castitati insideabantur, et "filias etiam nobilium concubinarum nomine detinebant." Chron. Joan. Wallingford.

lanimous prince, England was again infested by more numerous swarms of the Northern pirates; and at length was invaded by a formidable army under Sweyn, the king of Denmark, and Olave the king of Norway. Ethelred, unable to resist these united forces, had recourse to the ineffectual and ruinous expedient of purchasing peace by the offer of a pecuniary composition; and when those princes had returned to their own country, he excited his English subjects, to gratify their resentment against the Danes, by taking advantage of their security, and putting them to death in cold blood. The extent of this massacre, so disgraceful to the monarch, and to the nation, cannot easily be ascertained. The greater part of the historians consider it as extending to the whole of the Danish race at that time to be found in England; but the improbability of this, together with the authority of one ancient author, makes it reasonable to suppose, with Mr. Hume, that the slaughter was, for the most part, limited to those mercenaries against whom the rage of the populace was more immediately directed.

To revenge an act of so much perfidy and

cruelty, Sweyn, without loss of time, made another descent into Britain; and after destroying many of the towns, and desolating a great part of the country, he seems to have meditated an entire conquest of the kingdom. He did not live to complete his designs; but these were prosecuted by his son Canute; who met with little opposition; and in a short time added the English monarchy to that of Denmark, which he possessed by inheritance. This prince, by his abilities, by the prudence and lenity of his administration, and by the extent of his dominions, was justly entitled to the appellation of *great*, which he has received from posterity. In England, after the first effects of the conquest were over, he endeavoured to procure the good-will of his subjects, by reducing the English and Danish inhabitants under the same laws, and by abolishing all distinctions between them. He published a collection of laws, which has been preserved. After this monarch, two of his sons reigned successively in England; but, as they died without issue, the crown was restored to a prince of the Saxon line, known by the name of Edward the Confessor.

The conquest of England by the Danes appears to have been productive of no other political consequences, beside the interruption given to improvements, by the bloody and destructive wars by which it was attended. When Britain was deserted by the Romans, and fell under the Anglo-Saxon government, the country, which had made considerable progress in arts and civilization, was, of a sudden, reduced into a state of barbarism, and underwent a total revolution of its political system. By the Danish conquest, one set of barbarians were subjected to another, of kindred origin and manners; so that the sceptre was placed in different hands, without any alteration in the maxims by which it was swayed, or the authority by which it was maintained.

From the beginning to the end of the period, which is the immediate subject of this review, the circumstances of the kingdom were such, as contributed to render the government more and more aristocratical.

It has been already observed, that the landed estates, originally occupied by the Saxon conquerors of England, were of mode-

rate extent; for which reason there came to be a great number of allodial or independent proprietors. This was what might be expected, from the very limited power and opulence of the several heads of families who settled in the country, and from their want of the knowledge and experience requisite for the management of extensive possessions. During the continuance of their settlement, however, and the consequent improvement of their circumstances, the industry and abilities, or the good fortune, of individuals, were attended with gradual accumulations of wealth, and with proportional differences in the distribution of landed property.

From the reign of Egbert, when England became an extensive kingdom, the sovereign was necessarily removed to a distance from a great part of his subjects; who, for that reason, were equally beyond the reach of his protection, and of his authority. For putting a stop to those predatory incursions, by which the inhabitants of different districts were frequently harassing and injuring one another, the forces employed by the crown could seldom be brought to act, either with sufficient

quickness to relieve the sufferer, or with sufficient perseverance to chastise the offender. It was necessary, therefore, when the property of any person was invaded, or threatened with invasion, by a superior power, that the owner should not, in many cases, depend upon the interposition of the sovereign or public magistrate, but should endeavour to procure the immediate assistance of some of his neighbours. As the reciprocal acts of hostility, which were frequently committed, gave rise to hereditary feuds among particular families; so they occasioned, among other families in the same neighbourhood, a variety of combinations and alliances for mutual defence and security. When the parties, who thus formed a defensive alliance, had been exposed to the same difficulties, and expected to derive an equal benefit from their agreement, they were led to unite upon equal terms, and remained in a state of independence. Of the societies formed in this manner, we have many instances, both in England, and in the other countries of Europe*.

* They have been called *sodalitia*, *fraternitates*. Dr. Hickes, Diss. Epist. p. 21.

But it happened more frequently that small proprietors, being exposed to continual oppression, and to every sort of injustice, from persons of greater opulence, were obliged to solicit the aid of one powerful neighbour, in order to shelter them from the attacks of another. In such a situation they could not pretend to form an alliance upon the footing of equality; but were commonly reduced to the necessity of purchasing protection by the offer of submission and services. As they were to obtain, from their protector, the same advantages which he bestowed upon his ancient military servants, it was reasonable that they should, in like manner, acknowledge his jurisdiction, and contribute to the advancement of his power and authority. Thus, in some cases, by a formal agreement, in others, perhaps, by a long and uniform submission to the feudal services, many renounced that allodial property which they were no longer able to maintain; and, from the prospect of living in greater security, allowed themselves to be degraded into the state of military retainers or vassals.

From a similarity of circumstances, these transactions were often repeated in different

parts of the country, and were gradually extended over the whole kingdom. The more the demesnes of particular barons had been increased by such voluntary resignations, the remaining proprietors of small estates were the less able to retain their independence; and found it the more expedient to provide for their own safety, by incorporating themselves in some great feudal dependency. The allodial proprietors were, in this manner, continually diminishing; the landed property of England was daily accumulated in fewer hands; and the districts possessed by particular barons, who profited by the reduction of their neighbours into a state of subordination, were proportionably enlarged.

By these changes, the nobility, it is evident, must have obtained more weight in the scale of government. While the landed estates of individuals were so small as barely to supply the necessaries of life, the owners were too inconsiderable to procure influence over others, and too numerous to prosecute an uniform plan for the advancement of their common interest. But in proportion as particular persons had acquired extensive possessions, they were ena-

bled to maintain a train of dependants and followers, directed on all occasions by the will of their feudal superior, and inured, by long habits, to scruple at nothing, in order to gratify his ambition, or to exalt his dignity. From the smallness of their number, these great proprietors might, at the same time, be combined with more facility, in opposing the exertions of the prerogative.

The sovereign, we may suppose, was not an idle spectator of these alterations in the condition of his subjects. As every opulent baron obliged his poorer neighbours to become his vassals, the king also exerted himself in the protection of such as resided near the royal demesnes, and acquired over them the rights of a feudal superior. But the accessions acquired in this manner, to the revenue of the crown, and to the number of crown vassals, were probably not sufficient to counterbalance the vast accumulation of landed property under the lords of particular districts. We find accordingly, that about the reign of Edward the Confessor, a Godwin, earl of Wessex, a Leofric, duke of Mercia, a Siward, duke of Northumberland, with a few more barons, had become so powerful, as to be the objects of constant

alarm and jealousy to the crown, and in a great measure masters of the government.

The authority of the Anglo-Saxon princes was, on the other hand, weakened, in many cases, and prevented from acquiring stability by the defects of their title to the sovereignty.

The rules of succession to the crown appear, in all countries, to have been founded upon the same principles which govern the inheritance of private estates. According to the primitive notions of mankind, it was held, that, upon the death of any person, his estate should belong to his nearest relations, who, by being members of the same family, appeared to have the most intimate connexion with the family goods, of which they had formerly been a sort of joint possessors with the deceased. But in that state of the world, in which every family required a military leader to provide for their defence, the person invested with this office was by degrees permitted to assume the *management*, and at length to acquire the *property*, of that family-estate which was committed to his protection. Hence the right of *primogeniture* in succession; which, in opposition to the feelings of natural justice, has

been introduced from considerations of expediency. The eldest of the sons, being commonly the first who acquired experience and reputation in war, was, upon the death of the parent, admitted to be the leader and heir of the family; and when a general practice in his favour had once been established from the ordinary course of things, it was maintained by the force of custom, even in singular cases, where he had not the same superiority. In the succession to a monarchy there occurred a double reason for introducing this right of primogeniture; as the monarch was not only the leader and representative of the nation, but also the heir of that private estate, which had been the original source, and was the principal support of his dignity. But in kingdoms of great extent, and which had made but small progress in the arts of government, the indivisible succession of the crown was often maintained with greater difficulty than occurred in the transmission of private estates; because the several districts of an extensive monarchy, being at a great distance, and feebly united, were apt, upon the death of a monarch, to fall asunder, and to embrace the

party of those different members of the royal family, who might be tempted to aim at the sovereignty.

The rules of succession to the crown of England appear, in the period now under examination, to have been gradually advancing towards a regular standard; but were far from having yet attained a perfect uniformity. Among the nineteen princes who reigned from the union of the Heptarchy to the Norman conquest, we meet with no fewer than eight, who, according to the notions of the present age, must be regarded as usurpers; and several of these obtained the crown by titles, which, though considered as in some degree irregular, had not, in that rude age, been entirely exploded.

Instead of the eldest son inheriting the estate of a family, it is common, in early ages, that the children should be altogether supplanted by the brothers and other collateral relations; who, by having arrived at a greater maturity, and possessing superior prowess, are enabled to put themselves at the head of their kindred. Thus in many of the hordes, or petty nations, upon the coast of Guinea, the children are said

to inherit nothing from their father but his arms; his other effects are carried off by the older relations of the family. In the succession of the ancient kings of Numidia, though a country far advanced beyond the state of primitive barbarism, the brother, as we are informed by Livy, was preferred to the children of the preceding monarch. A similar practice may be discovered in several parts of the eastern world. It obtains at present in the Ladrone island; as it formerly regulated the transmission of the crown in the kingdom of Siam, and in some dynasties of the Chinese empire. Of this preference of the brothers, or other relations to the direct descendants, there are many traces in the early history of modern Europe; and among the Anglo-Saxon kings, even after the reign of Egbert, we meet with four instances of it; in the person of Alfred the Great, of Edred, of Ethelred, and of Edwy; the three first of whom succeeded to a brother; the last to an uncle; and all of them, in prejudice to the children of the predecessor. To these may be added, Edgar, surnamed *the Peaceable*, by whom Edwy his brother was dethroned.

According to the manners of a rude people, there is frequently little difference, with regard to the right of succession, between the children produced by a concubine and those who are born in marriage. It is the circumstance of living in the father's house, and having a sort of joint possession of the family estate, that is apprehended chiefly to bestow upon the children a title to the inheritance; and, in a country so destitute of refinement or delicacy, that the wife is indifferent about the fidelity of her husband, or is of so little consequence that her jealousy is not regarded, his bastards are likely to be often brought up under his own eye, and to receive a promiscuous maintenance with his legitimate offspring. This observation may be illustrated from the history of early nations, both ancient and modern, and in all quarters of the world. It is remarkable that, among the Israelites, in the time of their judges, the lawful children of Gilead had, apparently, no other way of preventing Jephthah, their bastard brother, from succeeding to the father's estate, than by driving him out of the family*.

* See Judges, chap. ix.

The strictest of morals introduced by christianity, contributed in Europe to diminish the privileges of bastard children. It does not, however, appear, that, even so late as the time of the Norman conquest, they were understood, in any European country, to be totally disqualified from inheriting estates. In England, not to mention the instances that might be collected among the kings of the Heptarchy, we find that Athelstan, the natural son of Edward the elder, was permitted to mount the throne, in preference to the lawful children of his father.

The accession of Canute was merely the effect of conquest; though that prince endeavoured to support his claim by means of a stipulation, real or pretended, with the former king. Upon the restoration of the Saxon line, the nobles had acquired so much power as enabled them to dispose of the vacant throne. To their favour Edward the Confessor, who usurped the right of the lineal heir, was principally indebted for the crown; and the advancement of Harold had confessedly no other foundation.

By these numerous deviations from the re-

gular course of succession, the monarch was prevented from acquiring that accumulation of hereditary influence, which is the effect of an uninterrupted and long-continued lineal descent; at the same time that those princes who obtained the crown in an irregular manner were, upon that account, subjected to difficulties, from which they were obliged to extricate themselves by courting the nobility, and by making such concessions as tended to alter the balance of the constitution.

From a singular incident, in the reign of the first Edmund, and which occasioned the death of that prince, we may easily discover that the Anglo-Saxon kings depended, in a great measure, upon the arbitrary assistance of their followers, for maintaining the dignity and authority of the crown; and were far from being provided with proper resources for securing a decent respect and obedience to their commands. "As Edmund, one day, was solem-
"nizing a festival in the county of Glocester,
"he remarked, that Leolf, a notorious robber,
"whom he had sentenced to banishment, had
"yet the boldness to enter the hall where he
"dined, and to sit at table with his attendants.

"Enraged at this insolence, he ordered him "to leave the room; but on his refusing to "obey, the king, whose temper, naturally cho- "leric, was inflamed by this additional insult, "leaped on him himself, and seized him by "the hair; but the ruffian, pushed to ex- "tremity, drew his dagger, and gave the "king a wound, of which he immediately "expired*."

* Hume's History of England.

CHAPTER X.

Variations in the State of Tythings, Hundreds, and Shires.

THE resignations of land, made by allodial proprietors in order to procure the patronage and protection of a feudal superior, were moulded in a particular manner, and received a peculiar direction, from the institutions formerly mentioned, of tythings, hundreds, and shires; as, on the other hand, the state of these institutions underwent a great alteration from the progress of those resignations.

A tything was composed of a number of heads of families, who, possessing allodial property of small extent, and therefore having few dependents, found it convenient to live together in the same village or neighbourhood, for their mutual defence and security. The bulk of the free people, or allodial proprietors, appear to have been originally incorporated in the different tythings, throughout the kingdom; though it is probable at the same time,

that there were particular thanes, or military leaders, who, from their superior wealth and power, had no occasion to join in any tything; and who lived, in a state of greater independence and dignity, at the head of their own bondmen, or tenants and vassals. Beside the villages, therefore, which were composed of the freemen, and which had the denomination of tythings, there were others, composed of the dependants of a feudal superior, placed under his immediate jurisdiction and authority*.

The primitive borsholder, or tythingman, was elected by the freemen of the tything over which he presided; and at first was probably but little superior to them in opulence. By degrees, however, the rank which he enjoyed,

* See the laws ascribed to Edward the Confessor, published by Lambard and Wilkins. L. 21. is translated as follows: "Archiepiscopi, episcopi, comites, barones, *et* "*omnes qui habuerint sacham et socam, thol, theam et infang-*"*thefe*, etiam milites suos, et proprios servientes, scilicet "dapiferos, pincernas, camerarios, pistores et cocos, sub "suo friborgo habeant. Et item isti suos armigeros, vel "alios sibi servientes sub suo friborgo. Quod si cui foris-"facerent et clamor vicinorum de eis assurgeret, ipse tine-"rent eos rectitudini in curia sua: illi dico qui haberent "sacham et socam, thol et theam, et infangthefe."

together with the influence, and the perquisites, which he derived from thence, enabled him to increase his fortune, and to extend his authority over the different members of the community. Upon his decease therefore, the person who inherited his estate, obtaining a great part of the weight and consideration of the predecessor, was naturally promoted to the same office; which after being continued for many generations in the same family, and bestowing upon the representative of it successive accumulations of property, was at last regarded as no longer elective, but as a permanent hereditary dignity. The borsholder came thus, in his own right, to demand military service from the members of the ancient tything; and to claim the privilege of being their judge both in civil and criminal matters. The tything, in short, was converted into a barony; and that voluntary combination of the inhabitants, intended for their mutual defence and security, was now lost in the more intimate connection between a superior and his vassals.

As the president of a tything advanced in the acquistion of this hereditary dignity, and found that his authority depended less upon

the consent of his original constituents, he became less attentive, we may suppose, to the inferior duties of his office; and the police of the village, in matters of small moment, was at length committed to a deputy. The remains of this inferior officer seem to be still preserved, in the annual election of a person to preside in each of the towns or parishes of England; who in some cases retains the old appellation of headborough or tythingman; but who, from the branches of business that have since devolved upon him, is more commonly called the *petty constable.*

Similar causes produced a change of the same sort in the condition of the *centenarius.* This magistrate, like the tythingman, was originally chosen by the freemen of the district over which he presided; but as the richest man of the district was most likely to carry the election, so the longer any individual had remained in the office, he became, from the many opportunities it afforded of increasing his riches, the more secure of holding it for the future; and for the same reason, the heir of his private fortune, to whom he communicated his family interest, had likewise the pro-

bability of obtaining the same dignity in preference to every competitor. Thus the leader of the hundred was, through length of time, converted into an hereditary officer; and, from the superiority of his original office, was enabled to establish a permanent authority over the several tythingmen of his district. When these last had become the hereditary leaders of tythings, they were frequently reduced, therefore, into a state of feudal subordination to the hundreder. In other cases, the influence of this greater magistrate was exerted in bringing particular tythings under his immediate protection, and in checking and supplanting the tythingmen, who might otherwise have acquired a feudal authority in these little societies.

When the *centenarius* became a person of too much consequence to execute the inferior branches of business connected with his department, a deputy was appointed for that purpose; whence the office of the *high constable*, elected annually in those districts, appears to have been derived.

With respect to the alderman or chief magistrate of a shire, it has been disputed whe-

ther he was originally nominated by the king, or elected by the freemen of the territory over which he presided. From what has been already observed, the latter of these opinions is much more probable than the former. Considering how little power was usually possessed by the sovereign in the infancy of government, not only among the Saxons, but in all the modern states of Europe; and considering that he had neither the nomination of the borsholder, nor of the *centenarius;* it is not likely, that he would assume the appointment of those who presided over the greater divisions of the kingdom.

It is universally admitted, that the Anglo-Saxon officers, who, in the early periods of the Heptarchy, received the appellation of *Heretochs*, were elected by the people whom they were appointed to command. These Heretochs were the leaders of considerable bodies of the Saxons, who upon the settlement of their followers, became the governors of provinces; and of consequence they were in reality the same sort of magistrates with those who, upon the more accurate division of the county into shires, were better known by the name of

aldermen or earls. It is therefore highly probable, that the first aldermen were appointed in the same manner with their predecessors the Heretochs. By degrees, however, the chief magistrate of a shire was intrusted with the collection and management of several branches of the crown revenue within the bounds of his district; and for the execution of this part of his duty he became, of course, accountable to the king. This afforded the sovereign a pretence for interfering in the appointment; and, from the effect which his interference could hardly fail to produce, appears to have given him a negative upon the election*. How long the aldermen were appointed in this manner, it is not easy to discover: but from the same circumstances which had operated in the case of the tythingman, and the hundreder; from the necessity of appointing the most opulent thane of a shire, who alone was able to command respect from

* In the reign of Alfred, the earldoms were all held during the pleasure of the king. Asser. de gest. Alfredi. In the reign of Edward the Confessor they had a third part of all fines, forfeitures, and other profits of the shire, for their labour. Brady's Complete Hist. of England.

the inhabitants; and from the accumulation of property, and of interest, arising from the possession of that high station; the office was frequently continued in the same families; and was, in the end, annexed to them as a permanent dignity. We accordingly find, that, in the latter part of the Anglo-Saxon line, the aldermen, or earls, as they were then more commonly called, had in general become hereditary. In France it appears that the same change in the state of the *counts* and *dukes* was, in like manner, completed before the accession of Hugh Capet; which corresponds to the English period of the Norman conquest.

We may easily conceive that the hereditary governor of a shire, who had, in his own right, the privilege of assembling and commanding the forces, as well as of holding the chief tribunal for distributing justice, in that extensive territory, was possessed of great influence and authority; and that many allodial proprietors would find they had no better means of securing themselves from insult and depredation than by courting his protection. Even the leaders of hundreds, who had acquired a feudal superiority over their own districts, but who

had been placed in a station subordinate to the earl, were sometimes induced, by motives of interest, to become his immediate vassals, and to promise the same service and submission to him, which they exacted from their own military retainers. In particular tythings, more immediately situated within the sphere of his influence, the powerful protection of the earl superseded that of their own tythingmen, and, by a natural consequence, rendered the inhabitants more desirous of yielding homage and fealty to that superior magistrate, than to their own proper officers. In such cases the authority of the smaller magistrates was lost and swallowed up in that of the greater.

The advancement of the earl gave occasion to the appointment of an inferior officer, the *sheriff*; upon whom was devolved the real business connected with the office. This officer was originally chosen by the free inhabitants, or allodial proprietors of the shire; though the extensive department committed to his care, and the great privileges with which he was invested, had the same tendency, as in the case of the chief governors, to vary the mode of his appointment, and, in

the course of time, to bestow upon him an independent authority.

It was in this manner that *allodial* was generally converted into *feudal* property, and that an enlarged system of military dependencies was at length established. The necessity of defence produced the primitive associations of tythings, hundreds, and shires, composed of allodial proprietors, with their respective bondmen or vassals. But, from the disorders of society, these combinations were too loose and feeble, to answer the purposes for which they were intended. To protect and rescue the individuals in each of these communities, it was requisite that their leader should be invested with greater authority than had originally been bestowed upon him; and that his associates or followers should become his permanent military servants. Tythings, hundreds, and even a considerable part of shires, were thus changed into fiefs; and the tythingman, the hundreder, and the earl, became the feudal superiors over such districts as found it expedient to court their protection. A subordination, too, was introduced among the leaders of those districts; and the tythingmen

of a hundred became frequently the vassals of the hundreder; as many of the hundreders belonging to a shire became vassals of that greater baron, the earl.

As these changes were produced very slowly and gradually, it is not surprising that they should be overlooked by cotemporary annalists. The meetings of the tything, the hundred, and the shire, appear to have retained the same names, and to have transacted the same sort of business, long after the two former were entirely, and the last, in a great measure, converted into the courts of a barony. The alteration, in reality, consisted merely in a different shade of authority acquired by the leader or chief magistrate of those divisions.

It seems worthy of notice, that this conversion of allodial associations into feudal dependencies, while it promoted the aristocracy, was calculated to improve the police of the country. When the tythingman, the hundreder, and the earl were exalted to the rank of hereditary barons, they were more capable than formerly of maintaining good order in their several districts; and, as every feudal superior was responsible to the public for the

conduct of his vassals and retainers, he had an interest to exert his authority in preventing rapine and violence. Unhappily, indeed, they were often too powerful to submit to this part of their duty; and, instead of repairing the injuries done by their dependants, were frequently disposed to screen them from the punishment due to their offences.

CHAPTER XI.

Changes produced in the Condition of the Vassals, and of the Peasants.

THE members of every feudal dependency consisted of the military retainers or vassals, and of the peasants, or churles; both of whom, in the latter part of the Anglo-Saxon government, experienced a great alteration in their circumstances.

In that state of society which determined allodial proprietors to shelter themselves under the protection of a feudal superior, and by which the number of military retainers was therefore gradually augmented, the privileges belonging to this order of men were naturally increased; and their condition was rendered more secure and comfortable. The original vassals of any person were the members of his own family, who, from natural affection, and from ancient habits, were strongly attached to his interest, and upon whom, from a reciprocal regard, as well as from the consideration of

expediency, when they became too numerous to live in his own house, he voluntarily bestowed the possession of lands for their maintenance. As the superior had no reason to suspect that these men would ever be deficient in fidelity, or seek to withdraw their allegiance; so they entertained no apprehension that, while they were willing to fulfil their duty, they should ever be dispossessed of their lands. The intimate connexion between the parties, and the simplicity of their manners, made them place a mutual confidence in each other, and prevented their being apprehensive of any future disputes: so that neither the superior required any specification of the services to be performed, nor the vassal, any express stipulation, with respect to the duration or terms of his possession. Thus the original vassals, though, in fact, their land was commonly permitted to remain with them and their posterity, were properly no more than *tenants at will*, and therefore entirely dependent upon the superior.

But when persons originally independent, had, with a view to certain advantages, allowed themselves to fall into a feudal subordination,

or had agreed to exalt an equal or a stranger to the rank of a superior, it could hardly be expected that these new vassals would be willing to hold their lands in so precarious a manner. Cautious of yielding any greater submission than their circumstances required, or suspicious of neglect or oppression from the person whom they had chosen for their protector, they naturally insisted, that the precise conditions of their tenure should be expressly ascertained; while the superior, distrusting the fidelity and attachment of men over whom he had no natural authority, and who submitted to him, perhaps, with reluctance, and from the mere pressure of temporary difficulties, was no less anxious to specify the nature of their service, and to secure the performance of it, by subjecting them, in case of negligence or disobedience, to severe penalties and forfeitures. From a variety of conjunctures, individuals might be laid under the necessity of submitting to harder conditions, upon some occasions than upon others; but, in general, when a feudal tenure was constituted by the consent of any allodial proprietor, it seems to have been expressly provided, that the fief should not only

remain with the vassal during life, but should descend, either to his heirs male, or to such of his heirs as were specified in the grant.

By the establishment of those hereditary fiefs, the vassal, instead of being a precarious tenant, became, in effect, the proprietor of the feudal estate, and the interest of the superior was reduced to a *reversion* in default of the vassal's heirs, together with a right of levying, in particular cases, a variety of perquisites or casual emoluments. Of these casual emoluments or *incidents*, as they are called, which might still accrue to the superior from the estate of his vassal, after it was made transmissible to heirs, the feudal writers have commonly enumerated seven different sorts.

1. Though fiefs had been rendered hereditary, yet, as every person who enjoyed them was liable for the feudal services, it was necessary that an heir, before he obtained the investiture, should solemnly undertake the performance of them, and come under an oath of fidelity to the superior. Upon the death of any vassal, therefore, the superior laid hold of the lands, and detained them in his possession, until the heir should claim a renewal of the

feudal engagement. This privilege gave rise to what is called the incident of *non-entry*.

2. When the feudal tenures were precarious, the sons of the vassals frequently endeavoured, by a present, to procure the favour of the superior, and to obtain the continuance of their ancestor's possession. Even after fiefs became hereditary, it still was found expedient to secure, by means of a bribe, what, though a matter of right, was not easily extorted by force; and the original arbitrary donation was converted into a regular duty, under the name of *relief*.

3. If the heir of a former vassal was incapable of performing the feudal service, he had no right to claim the possession of the fief. While he was under age, therefore, the lands were possessed by the superior; who, at the same time, from a regard to his own interest, if not from affection to the family of his old vassal, was induced to assume the guardianship and protection of the minor, his future military servant. Hence the complex burthen, and privilege, which went under the name of *wardship*.

4. During the disorders which prevailed

under the feudal governments, it was of great consequence that the military vassals should not contract an alliance with the enemy of their liege lord; which might have a tendency to corrupt their fidelity. When fiefs therefore were secured upon a permanent footing, a provision was made against an event of this dangerous nature; and the vassals who married without the superior's consent, or who even refused to marry according to his desire, became liable to a pecuniary composition or penalty. Such was the incident of *marriage*; a perquisite suited to the rude and barbarous manners which occasioned its establishment.

5. Beside the ordinary revenue which the superior drew from his estate, he was accustomed, upon extraordinary emergencies, to apply to his vassals, and to request from them a contribution in order to relieve him from his immediate embarrassment. While they held their lands precariously, a request of this nature was equal to a command; since the superior might at pleasure seize upon the whole estate of his tenants. But when the vassals had obtained a more permanent right, it became necessary to settle the particular

occasions upon which those contributions were to be made, as well as the extent of the sum that might be demanded; and in this manner, *aids* or *benevolences* came to be enumerated among the duties payable to a superior. Three cases are mentioned, in which, over all the feudal kingdoms, these contributions might be exacted; to redeem the superior from captivity; to portion his eldest daughter, at her marriage; and to defray the expence of making his eldest son a knight.

6. Though a fief had been rendered hereditary; yet, upon the total failure of heirs, it necessarily returned to the superior. The vassal might also forfeit his right to the lands, by his neglect to perform the feudal service, or by any violation of his duty. This forfeiture, or termination of the fief, was called an *escheat*.

7. From the primitive state of the feudal tenures, the vassal had no title to alienate his fief, which he possessed as the wages merely of his military service. But when fiefs, by being transmissible to heirs, began to assume the appearance of property; when the general advancement of arts had rendered land more frequently an object of commerce; and when,

upon the suppression of the former disorders, the military service of the vassal was rendered of less importance, it became customary, by the payment of a sum of money, to compound with the superior for the privilege of selling the feudal estate. This produced the perquisite of superiority, called the *fine of alienation*.

These feudal incidents may be considered as the remains of that absolute property of the fief, which the superior had formerly enjoyed; but which, with reservation of such casual emoluments, was now conveyed to the vassal.

After this new species of military retainers had become numerous, and had spread themselves over the country, it is natural to suppose that their privileges would, by the force of example, be communicated to the ancient vassals. The ancient feudal tenants, who, from the more extended connections of the superior, had probably become less the objects of his peculiar attention, and were not always treated with those marks of distinction to which they supposed themselves entitled, beheld with envy and jealousy the stability and security enjoyed by his new vassals; and were solicitous to hold their lands under the same permanent tenure.

A concession of this nature, by which the old and faithful followers of a chief were placed upon a footing of equality with strangers, could seldom be decently withheld from them; and in cases where he stood in immediate need of their assistance, was likely to be easily obtained. As these privileges were slowly and gradually introduced, and as they were often accelerated or retarded by the situation of particular baronies, not to mention a variety of accidental circumstances, it is impossible to mark the precise period at which their establishment was completed; though it is probable that, before the Norman conquest, they were extended to the greater part, if not the whole, of the ancient vassals.

While the incidents due to the superior were thus ascertained with accuracy, the interest of the vassals made it no less necessary, that the extent and duration of their military service should be exactly determined. In Britain, and probably in several kingdoms upon the continent, it was limited accordingly to forty days for each year; a period that might appear fully sufficient for those desultory enterprizes which the superior had occasion to

undertake. If ever he chose, after the expiration of this period, to retain his vassals in the field, he was under the necessity of procuring their consent, and was obliged to bear the charges of their maintenance.

The effect of these changes in the state of the military tenures could not fail to be discernible in the administration and government of every feudal dependency. Though it still was, no doubt, the interest of the vassals to avoid all contention with the superior, and to merit his favour by their fidelity and alacrity in the discharge of their duty, yet they were not under the same necessity of paying an implicit obedience to his commands. To whatever inconveniencies they might be subjected from the manner of levying the feudal *incidents*, yet, while they punctually performed their services, they could not, without gross injustice, be deprived of their possessions; and they had a right to follow their own inclination in the management of their private concerns. Sensible of this alteration in their circumstances, the superior was induced to be more cautious of disobliging them, to pay more deference to their opinions, to listen and give

way to their remonstrances, and, in public measures of importance, to act with their advice and concurrence. Thus, while the influence and power of the great lords was gradually extended by the multiplication of their vassals, their authority over each particular vassal was necessarily reduced; and they were obliged to exercise it with greater moderation, as well as to endeavour, by the arts of popularity, and even, sometimes, by pecuniary rewards and advantages, to gain the effectual support of their followers.

The improvements made in agriculture, produced alterations, of no less importance, in the state of the peasants or *churles*. The peasants, as has been formerly observed, were originally bondmen or slaves. But as from the nature of their employment, and from their living at such a distance as to be beyond the reach of the master's inspection, it was found expedient to excite their industry by bestowing upon them successive gratuities and privileges; many of them were enabled, at an early period, to acquire considerable property; and some of them were advanced to the condition of tenants, intrusted by the master with

a discretionary management of their farms. In the natural course of things, these tenants were afterwards raised to a still better situation. When, in consequence of some experience in husbandry, they were about to undertake an expensive melioration of their farms, common prudence required that they should be secure of the possession, for such a period as might afford them a reasonable prospect of a return for their labour and expence. By offering an advanced rent to the master, they sometimes prevailed upon him to make an agreement of that nature, and to grant them a *lease* for a certain number of years. From the improving circumstances of the tenant, he sometimes obtained, not only a right of holding the estate for life, but of transmitting it to heirs; and there appear to have been some occasions, though it is probable these were not very common, on which, by the payment of a full price, he was enabled to make an entire purchase of the lands.

Those churles who had acquired a landed estate transmissible to heirs, to be held for payment of a yearly rent, were denominated *soc-*

cage vassals. From their employment and character, they were of an inferior rank to the military vassals; but they had the same permanent right to their estates. They were also liable to the same *incidents of superiority*; excepting those of *wardship* and *marriage*; the former, because the superior was disposed to pay no attention to the education of such of his dependants as were employed merely in agriculture; the latter, because the alliances which they contracted were deemed of little consequence to him.

The churles who made a full purchase of a landed estate should have become allodial proprietors, and have acquired the rank and privileges of nobility; but the influence of ancient usage prevented so sudden and violent a change in the rank of individuals; and as the proprietor who sold his lands, was unwilling entirely to resign his dignity, so the purchaser had not the presumption to deprive him of it. To retain a faint shadow of the ancient connection, the latter became bound, as an acknowledgement of the superiority, to pay to the former an elusory annual duty, if ever it

should be demanded*. We find that, by a statute in the reign of king Athelstan, a churle who had purchased an estate consisting of five hides of land, with certain appendages, usually possessed by gentlemen of that fortune, was declared to have a right to all the *privileges of a thane*; by which those of a *lesser thane*, or military vassal, were probably understood†.

From this law, which demonstrates that the encouragement of agriculture was become an object of public attention, it may be inferred, that though in some cases the *churles* were enabled to acquire landed property, they had not been understood, upon that account, to obtain of course the privileges of the military people; since these were not conferred upon them without a special interposition of the legislature; nor even by that statute, except upon such as had accumulated a very considerable estate. Such was the original inferiority of the peasants, and so strong were the habits connected with their primitive condition, that

* This tenure has been frequently confounded with the ordinary soccage; but sometimes is distinguished by the name of *blanch*.

† Judicia civitatis Lundoniæ. Wilkins, Leg. Sax. p. 70.

though they had been raised to independent circumstances, it was with some difficulty they were permitted to hold the rank of gentlemen, and procured the treatment suitable to men of that superior class.

The freedom acquired by a great proportion of the peasants, together with the advances in husbandry from which it proceeded, gave rise to an immediate improvement in arts and manufactures. The first artificers were villeins, or servants of the greater thanes; who happening to discover some ingenuity in the common mechanical arts, were employed by the master in those branches of manufacture, which he found requisite for his accommodation. The possession of their farms, according to the rude manner in which agriculture was then practised, did not hinder them from exercising this collateral employment. When these people began to be emancipated from their ancient bondage, they were at liberty to work, not only for their former master, but for every person who chose to employ them; and by working for hire, they drew a regular profit for their labour. A competition was then introduced among different workmen,

which contributed to promote their industry and skill; at the same time that the improvements which have been mentioned in the condition of the lower class of people, by increasing their opulence, produced an increase of demand for the ordinary conveniences of life; and therefore afforded greater encouragement to the occupations by which those conveniences were supplied. Particular branches of manufacture, or of labour, coming in this manner to be more in request, occasioned more constant employment to individuals; who, at length, found it their interest to abandon every other occupation, and to depend, for their livelihood, upon that single branch in which they had attained a peculiar proficiency.

A variety of trades and mechanical professions were thus introduced; and the artificers and labourers composed a separate order of men in the community. As these grew up and were multiplied, they became the chief part of the inhabitants in those villages where they resided; which were gradually enlarged into towns, of more or less extent according as their situation, or other circumstances, proved more favourable to manufactures.

It is unnecessary to observe, that the separation of trades and professions, among the different inhabitants, occasioned, of course, a degree of traffic or exchange of commodities. When the artisans, as well as the farmers, confined themselves to a single employment, they were able, by their own labour, to produce only one sort of commodity; and if they wanted any thing of a different sort, they had commonly no other method of procuring it, than by an exchange with the person who had produced it. This exchange was at first limited, we may suppose, to the inhabitants of the same town or village; but, according as different places began to excel in manufacturing goods of different kinds, it was extended to neighbouring towns, or to the more distant parts of the country. Upon the opening of such intercourse between places at a distance, the inhabitants found it, in some cases, inconvenient to go themselves to purchase the goods which they wanted, and had occasion therefore to employ some of their neighbours for that purpose; from which there arose, by degrees, a common *carrier*, upon whom this branch of business was frequently devolved. As this person acquired a little stock, he ad-

ventured sometimes at his own risk, to buy commodities in one place, with a view of selling them in another; and his employment was at length improved into that of a pedlar or travelling merchant.

Although these tradesmen and mechanics were no longer in a servile condition, they had still much dependence upon the original master, or feudal superior, of that village or town in which they resided. He defended them from the attacks of the military people around them; to which, from the turbulence and disorder of the times, they were greatly exposed; and which, from their unwarlike dispositions, they were of themselves but ill qualified to resist. He also encouraged and promoted their trade, by permitting them to hold *fairs* and *markets*, or stated seasons of rendezvous, between the merchants and customers of different places; by supplying them with warehouses, and with measures and weights, for the sale of their goods; and by such other kinds of assistance as, from the rude state of the country, and in the infancy of commerce, their circumstances made them

stand in need of. In return for these advantages, he levied from them such tolls and duties as they were able to bear; and of consequence augmented his revenue in proportion to the increase of their wealth.

According as the patron and protector of these manufacturing and trading towns was possessed of greater influence and power, their trade was likely to be the more prosperous and flourishing. Some of those towns, having sprung from the peasantry of the crown-demesnes, were under the immediate patronage of the sovereign; others, being situated upon the estates of the greater thanes, were under the protection of those nobles. The former, it is evident, enjoyed a great superiority over the latter. The protection of no particular nobleman could reach beyond the limits of his own estate; but that of the sovereign extended, in some measure, over the whole of the kingdom: not to mention that the king, by residing occasionally in the towns of which he was the immediate protector, and which he was naturally desirous of encouraging, produced a resort of the nobility and gentry to

those places; and, by the expensive living incident to a court, created an additional consumption of their commodities.

The extent of the trade of England, before the Norman conquest, cannot, at this distance of time, be ascertained with any degree of precision; but there is reason to believe that it was not very considerable. Of this we need require no further evidence than the small size of the principal towns in the reign of William the conqueror*. It appears, however, that, for more than a century before that period, the commerce and manufactures of the country had been making advances which attracted the notice of the legislature. By a law of king Athelstan it is enacted, that a merchant who, upon his own account, had made three trading voyages to a foreign country, should acquire the privileges of a thane†. Such extensive trade, it was probably thought at that time,

* With regard to this point, see Doomsday-book—and Dr. Brady on Boroughs.

† Et si mercator tamen sit, qui ter trans altum mare "per facultates proprias abeat, ille postea jure thani sit "dignus."—[Judicia civitatis Lundoniæ. Wilkins, Leg. Sax. p. 71.]

could be attempted only by a person of uncommon spirit, and in affluent circumstances; whose elevation, while it served as an incitement to commercial enterprize, might be regarded as no disparagement to the military people. In other statutes which have been preserved, of the same, and of subsequent princes, we meet with some of those fundamental regulations, which commonly have place in every country, upon the first efforts to introduce a regular commerce; such as the establishment of certain formalities in completing mercantile transactions*; and the appointment of a mint in the principal towns†; together with that of a common standard of money, and of weights or measures‡.

By the addition of artificers and tradesmen to the different orders formerly mentioned, the whole people of England came now to be distinguished into four great classes; which, from their differences in rank or employment, in characters and habits of living, were separated and kept at a distance from one another.

* Wilkins, Leg. Sax. p. 80, 81.

† Ibid. p. 59.

‡ Ibid. p. 78.

Those who exercised the honourable profession of arms, whether in the station of *greater* or *lesser* thanes, of superiors or vassals, thought it inconsistent with their dignity to engage in any lucrative occupation; and disdained to contract alliances with farmers or manufacturers*. The two latter orders of men, though nearly of the same rank, were by their situation prevented from living together, and led to acquire very different manners, and ways of thinking. The solitary and robust employment of the farmer was not apt to form a similar style of behaviour and accomplishments to that which was produced by the sedentary town-life of the manufacturer; and in a country where improvements had not been carried so far as to create an intimate correspondence among all the members of society, those two sets of men were not likely to exchange their professions. The children of the

* After the Norman conquest, we find that the superior lord was prohibited by statute to marry his female ward to a *villain* or a *burgess*. It is probable that the rank of the two last-mentioned orders of men had risen considerably, before this prohibition was thought necessary.

farmers, as well as those of the tradesmen and mechanics, were commonly disposed to follow that way of life with which they had been early acquainted. They were even bred up in most cases, to their father's employment, before they could well have an opportunity of comparing it with any other. Not only were those two orders of men, in general, confined to their respective professions, but the mechanics, employed in the several branches of manufacture, frequently transmitted their occupations to their posterity; and continued them, for many generations, in the same families. The clergy, who formed a numerous and powerful body, were no less distinguished from the three other classes, by their peculiar education, by their separate views of interest, and by their professional character and manners. The celibacy, indeed, of the clergy, which, however, was introduced in England after the period that we are examining, prevented this order of men from being so entirely separated from the rest of the inhabitants, as might otherwise have been expected. When churchmen were prohibited from having posterity

of their own, it was necessary that their profession should be supplied from the other ranks of the society.

From the natural course of things, it should seem, that in every country where religion has had so much influence as to introduce a great body of ecclesiastics, the people, upon the first advances made in agriculture, and in manufactures, are usually distributed into the same number of classes or orders. This distribution is, accordingly, to be found, not only in all the European nations, formed upon the ruins of the Roman empire; but in other ages, and in very distant parts of the globe. The ancient inhabitants of Egypt are said to have been divided into the clergy, the military people, the husbandmen, and the artificers; and these four descriptions of men were, by a public regulation, or more probably by the influence of custom, derived from the early situation of the country, kept invariably distinct from one another. The establishment of the four great *castes*, in the country of Indostan, is precisely of the same nature. This division of the people, which goes back into the remotest antiquity, has been ascribed, by historians and po-

litical writers, to the positive institution of Brama, the early, and perhaps fabulous legislator of that country; but, in all probability, it arose from the natural separation of the principal professions or employments in the state; as it has been since retained by that excessive indolence, to which the inhabitants of those warm and fertile regions are addicted, and which has hitherto checked their improvements, by producing an aversion to every species of innovation.

CHAPTER XII.

The Influence of these Changes upon the Jurisdiction and Authority of the feudal Lords.

THE advancement of the Anglo-Saxon vassals and peasants to greater security and freedom, and the separation of the trading people from the class of husbandmen, could not fail to limit the authority of the superior, and more especially to affect the state of his jurisdiction. When his military retainers held their benefices precariously, and when the other members of his barony were either bondmen, or merely tenants at will, he found himself under no restraint, in deciding their differences, and in punishing their offences; but after the former had obtained hereditary fiefs, and a great proportion of the latter had been exalted to the rank of soccage-vassals, he was obliged to relax his claim to their obedience, and to distribute justice among them with greater moderation and circumspection.

The retainers of every feudal superior were

bound, not only to the performance of military or other services, but also to assist him in maintaining good order and tranquillity within his barony; and therefore, when any of them complained of injustice from another, or was accused of a crime, the baron found it expedient, instead of deciding by virtue of his own authority, to call a number of his other vassals, and to proceed with their advice and concurrence in trying their cause. This expedient was the most equitable for the person concerned in the trial, as well as the best calculated for giving weight to the decision. The assessors of the judges were the *pares curiæ*, men of the same rank with one another, and with the parties; they were chosen occasionally, and varied in each cause, to avoid burdening any individual more than his just proportion; and they were commonly selected from the neighbourhood of the place where the accusation or dispute had taken its rise, that, from their own private knowledge, they might be enabled to form a better judgment of the facts in question.

Thus the trial by an *inquest* or *jury*, which had formerly taken place in the tribunals of

the shire, and of the hundred, was introduced into those of a feudal barony. The causes, however, of this institution, in the former and in the latter, were somewhat different. A jury was found convenient, in the courts of the shire, and of the hundred, to supersede the attendance of all their members; and might be regarded as a sort of committee, in place of a full and regular meeting. In the courts of the baron, its interpositions became necessary, in place of the decisions formerly given by the judge himself, in order to supply his deficience in authority over vassals whose fiefs had been secured to them by a permanent right. A jury was therefore an institution less popular than that which had formerly obtained in the county or the hundred courts, but more so, than the mode of jurisdiction originally displayed in the courts of the baron. It is reasonable, at the same time, to suppose, that, when allodial proprietors had been changed into vassals, the custom of jury-trials in the courts of the former, would facilitate the introduction of a similar practice in the judicial establishments of the latter.

That this form of trial obtained universally

in all the feudal governments, as well as in that of England, there can be no reason to doubt. In France, in Germany, and in other European countries, where we have any accounts of the constitution and procedure of the feudal courts, it appears that law-suits of every sort, concerning the freemen or vassals of a barony, were determined by the *pares curiæ;* and that the judge took little more upon him, than to regulate the method of proceeding, or to declare the *verdict* of the jury.

The number of jurymen was originally varied in each cause, according as the opulence and power of the parties, or the magnitude of the dispute, rendered it more or less difficult to enforce the decision. So little, after all, was the authority of the court, that, in many cases, the party aggrieved by the verdict assumed the privilege of challenging the jurymen to single combat*. From the progress of regular government, and in consequence of the disposition among mankind to be governed by general rules, a certain number of jurymen became customary in ordinary

* Spirit of Laws.

causes; and at last was universally established. From accidental circumstances, of little importance, a different number has been established in different countries; as that of twelve in England and fifteen in Scotland.

With respect to the time when trials by jury were first introduced into the court of every feudal barony, we are left in the same obscurity, as concerning their previous introduction among the allodial proprietors, in the courts of the hundred and of the county. But considering the circumstances from which the superior was induced to adopt this mode of procedure, there is ground to believe that it arose upon the establishment of hereditary fiefs, and became gradually more universal, according as the number of the feudal tenants, who had obtained a perpetual right to their possessions, was increased.

In this view, it seems probable that the practice of juries, in the baron-courts, was not very common in England till near the end of the Anglo-Saxon government. In the opinion of some antiquaries, the first vestige of a jury-trial, in the English history, is posterior to the Norman invasion; a mistake

which appears to have arisen from the supposition, that before this period hereditary fiefs were unknown in England.

Though the fact seems now to be admitted, that jury-trials were established in the baron courts of every feudal kingdom, yet the origin of that institution has been the subject of much doubt and controversy. Some authors have thought that jurymen were originally *compurgators*, called by a defendant, to swear that they believed him innocent of the facts with which he was charged. In the church courts, a person accused of a crime was understood to be guilty, unless he could clear himself by what was called the *oath of purgation;* and in some cases, unless his own oath was confirmed by that of a number of other persons acquainted with his behaviour. The injustice of this general presumption of *guilt*, the very opposite of what should be entertained in every court of justice, was the less observable, as the consequence of it was merely to draw upon the guilty person a spiritual admonition, or censure, for the good of his soul. From the influence of ecclesiastical procedure, the same rule, however, was after-

wards adopted in the temporal courts; where it came to be much more oppressive.

But the province of *compurgators*, in those courts, and that of *jurymen*, were so totally different, as to make it scarcely possible to conceive that the latter could arise out of the former. Compurgators were merely witnesses; jurymen were, in reality, judges. The former were called to confirm the oath of the party, by swearing, according to their belief, that he had told the truth: the latter were appointed to try, by witnesses, and by all other means of proof, whether he was innocent or guilty. Compurgators, for this reason, were called by the party himself: the jury, on the contrary, were named by the magistrate.

In consequence of the different departments, occupied by these two descriptions of men, it should seem that, in most of the feudal governments, they existed at one and the same time; and that juries were accustomed to ascertain the truth of facts, by the defendant's oath of purgation, together with that of his compurgators. We can have no doubt that this was formerly the practice; since it is,

even at present, retained by the English, in what is called the *wager of law*.

There are two particulars in which we discover a resemblance between the procedure of compurgators and of jurymen; whence, in all probability, the opinion abovementioned has arisen. Both of them were obliged to swear, that they would *tell the truth*; and both were subjected to confinement until they had given their declaration. But these regulations concerning jurymen afford no proof that they were ever considered in the light of compurgators. According to the simple idea of our forefathers, guilt or innocence was regarded as a mere matter of fact; and it was thought, that no man, who knew the real circumstances of a case, could be at a loss to determine whether the culprit ought to be condemned or acquitted. It was, at the same time, suspected, that individuals drawn occasionally from the common mass of the people, to give judgment in a law-suit, might be exposed to improper influence; for which reason precautions were taken to prevent their having the least intercourse with the parties or their connexions.

As to the unanimity required in the English juries, a circumstance in which they agree with the ancient compurgators, it has not been universally established in the feudal governments. President Montesquieu, who, at the same time, accounts for it, from a point of honour observed by the *pares curiæ* in their judicial decisions, that they should agree with one another in pronouncing a verdict; because they were obliged to fight either of the parties who might give them the lie.

The same form of procedure which took place in the administration of justice, among the vassals of a barony, was gradually extended to the courts held in the trading towns. Notwithstanding the freedom acquired by the mercantile people, they still submitted to the jurisdiction of that person to whom they were indebted for protection, and were reduced by him under a system of government, similar to that which he established among his vassals. In as much as they held lands, for which they paid him a certain rent, they were in reality a species of feudal tenants.

The ancient jurisdiction of the greater thanes, or feudal superiors, came thus to be

exercised in two different courts. The one, in which causes were determined with the assistance of a jury, took cognizance of the military and soccage vassals, together with the inhabitants of the trading towns, under the protection of the superior. The other, which proceeded without that formality, was held for the trial of such members of the barony as were still in a state of greater dependance. The former is that which, according to some authors, was properly called the *court-leet*; being the court of the Liti, or free people. The latter, in which the superior retained his ancient authority, received by way of distinction, it is said, the general appellation of the *court-baron**.

It is worthy of notice, that the king, considered as a feudal superior, was in the same circumstances with the greater thanes; and that, by the gradual multiplication of his vassals, his authority over them underwent a

* Bacon's discourse on the government of England, collected from the MS. notes of Mr. Seldon, chap. 33. Also The Mirror.

"Liti ac Litones idem ac Lassi et Liberti censentur." Muratori Ant. Med. Ævi. tom. i. dissert. 15.

similar limitation. The same regulations, therefore, concerning the distribution of justice by the intervention of juries, with the same distinction in this respect between his vassals and bondmen, were introduced into the baron courts of the king, as into those of the nobility, or such of his subjects as retained their allodial property.

The improvements which I have mentioned, in the state of the feudal courts, could not fail to produce a more equal and impartial distribution of justice; and this circumstance, together with the general advancement of civil society, contributed to increase the business of those tribunals. From the greater diffusion of property among the people of inferior condition, law-suits became somewhat more numerous; and from their being frequently decided by men of the same rank with the parties, were likely to procure a fuller and more deliberate hearing. As the exercise of jurisdiction was thus rendered more tedious and burdensome, the great lords, as well as the king, who had been accustomed to preside in the trial both of civil and criminal causes, within their several baronies, were less

disposed to give the necessary attendance; and by appointing deputy judges, endeavoured to relieve themselves from a great part of the labour. The same circumstances which gave rise to these inferior officers, contributed afterwards to enlarge their powers; and from the negligence of their constituents, who seldom interfered in controuling their decisions, and at last entirely abandoned the employment of judging, they became the ordinary magistrates in the several demesnes or territories committed to their direction.

The transference of jurisdiction, from the primitive judges to their deputies, laid a foundation for one of the most important alterations in the system of judicial policy. The *executive* and *judiciary* powers, with which every feudal baron was originally invested, were in this manner separated from each other; and the exercise of the latter became the sole occupation of particular persons; who, upon that account, were likely to give greater application, as well as to acquire more experience and knowledge in the determination of law-suits. The judges of a barony, though nominated by the baron, had necessarily their

own views of right and wrong; and having a character to support, might be supposed, in some cases, to conduct themselves without regard to the interest of their constituents. It happened likewise from the natural course of things, that as the most opulent vassals were found the best qualified for maintaining the dignity of a judge, the same persons were frequently enabled to secure the office during life, and even sometimes to render it hereditary. In either case the judge became in a great measure independent of the feudal lord from whom his authority had been derived. It must be acknowledged, however, that long after the period which we are now examining, the king's judges continued under a precarious appointment.

A distinguished political author has pointed out the separation of the judicial power from the king's prerogative, as one of the great sources of the liberty enjoyed by the subjects of Britain. To those who speculate upon the conduct of human affairs, it is amusing to discover, that this important regulation was neither introduced from any foresight of its beneficial consequences, nor extorted from the

monarch by any party that were jealous of his power; but was merely the suggestion of indolence; and was adopted by the king, in common with other feudal superiors, to relieve them from a degree of labour and attention which they did not chuse to bestow. It was, in reality, a consequence of the general progress of society, by which employments of every sort, both liberal and mechanical, have been distributed among different individuals, and have become the object of separate professions and trades.

As soon as the business of a judge became the sole employment of particular persons, it was necessary that they should obtain a maintenance in return for their labour. This was acquired without any difficulty, from the very exercise of their profession; as the superior by whom they were appointed, empowered them to exact a fee or perquisite from every party whose cause they had occasion to determine. These exactions, which came to be fixed, in every step of judicial procedure, according to the degree of trouble it was understood to produce, were not only sufficient for maintaining the judge, but afforded also an emolument to

the superior, who demanded from his deputy a strict account of the fees he had levied. To prevent any embezzlement in this respect, a clerk was appointed to sit in court along with the judge, and to keep a record of judicial proceedings. Such was probably the first intention, not only in England, but in all the feudal countries, of recording the decisions of a judge; though the practice was afterwards made subservient to other purposes of the highest utility.

Of the fees, or perquisites, drawn by the judges under the appointment of the crown, the sovereign acquired a considerable proportion, which formed an additional branch of the public revenue.

From this method of maintaining judges, they had obviously an interest to increase their perquisites by encouraging law-suits, and multiplying the forms of judicial procedure. Hence there occurred a new reason for the interposition of juries in the court of a barony; that they might prevent the unreasonable delay of justice. It may, at the same time, perhaps be admitted, that the interested activity and vigilance of the magistrate was, in that

early and rude age, more beneficial in preventing disorder and violence, than it was hurtful, either by promoting litigiousness, or by introducing tedious and absurd formalities into the system of judicial discussion.

CHAPTER XIII.

Of Ecclesiastical Courts.

WHILE the nobles were gradually extending their power, and reducing that of the sovereign, the ecclesiastical order was advancing, with hasty strides, to the establishment of an authority independent of either. The barbarism and superstition that succeeded the downfal of the Roman empire, and the system of ecclesiastical government erected in the western part of Europe, had a uniform tendency, as has been already observed, to increase the wealth and influence of the church. Were we to consider merely the progress of superstition, we should expect that the usurpations of the clergy would be most rapid in those European countries, which were at the greatest distance from the incitements to cultivation, and in which the ignorance and simplicity of the inhabitants disposed them to follow more implicitly the direction of their spiritual guides. But the fact was other-

wise. The kingdoms in the neighbourhood of the pope's residence, and of his temporal dominions, were nearer the center of that artful policy, which by taking advantage of conjunctures, exalted no less the power and privileges of the church than the dignity and authority of her leader. Thus the right of levying the *tythes*, that enormous imposition for the support of the clergy, and which marks the prodigious extent of ecclesiastical influence, was introduced in France, and over a great part of Italy, as early at least as the time of Charlemagne; which corresponds to that of Egbert among the Anglo-Saxons; and the same tax was afterwards extended, by degrees, to the other countries of Europe. It appears to have been finally established in England, during the reigns of Alfred and of Athelstan; patriotic princes, who, doubtless, found themselves under the necessity of giving way to the current of the times, by submitting to such an oppressive exaction.

The increasing opulence of the clergy, as it was an effect of the blind zeal, and the general debasement of the people, so it was accompanied by a corresponding perversion of

religious opinions, and by an increase of superstitious observances. The real virtues of society, whose intrinsic value recommends them to our observance, and which frequently appear to cost us nothing, came to be little esteemed, in comparison of penances and mortifications; from which nature is disposed to shrink; and which are submitted to, for no other purpose, but that of appeasing the wrath of an offended deity. These last were accounted highly meritorious in persons of every description: but were thought more especially suitable to the profession and character of churchmen; upon whom it was incumbent to set an example to others. The monks, in particular, who, by their original institution, had no other means of distinction, were incited to procure admiration by the austerity of their lives, and by the severe and painful discipline which they underwent. As they advanced in reputation and popularity, they acquired more numerous and wealthy establishments; their influence in religious matters became proportionably extensive; and they not only rose to great consideration in the government of the church, but frequently, too,

interfered in that of the state. From the continent of Europe, the same practices, and ways of thinking, were communicated to Britain; where, about the middle of the tenth century, we find St. Dunstan, at the head of the regular clergy, possessed of such power and credit, as enabled him to controul the administration of government, and even to dispose of the crown.

Among the several branches of mortification imposed by the monastic rules, that of celibacy, or a total abstinence from the intercourse of the sexes, was deemed the most important; whether on account of the difficulties which must be surmounted in counteracting the most violent propensities of nature; or on account of that variation of temperature in the human frame, which, however irresistible those propensities may be at certain seasons, yet, on other occasions, renders the indulgence, or even the expression of them, an object of aversion and disgust. This, therefore, became now the usual topic of declamation to the English monks; who, finding the secular clergy to be their great rivals in the public esteem, and being impatient of that superior authority which they possessed, in-

veighed against their married life, as inconsistent with the purity of a christian pastor; representing their wives in the light of concubines or prostitutes, and their children as bastards. Though the doctrine inculcated by these fanatical zealots was not carried into execution until a subsequent period, it appears, even at this time, to have been approved and supported by the general voice of the people.

From the situation of the Christian clergy, and from the influence and authority which they enjoyed, they were led early to assume the cognizance of judicial business, and to form a number of tribunals for the exercise of their jurisdiction. Even before the time of Constantine, when they received no protection or countenance from the civil government, they were accustomed to enquire into the faith and manners of Christians, and, after repeated admonitions, to *excommunicate* those individuals who persisted in opinions, or practices, which the church had condemned. This jurisdiction was at first exercised by the clergyman, together with the most respectable among the laity, of each particular church; but when the zeal of the latter, from the greater exten-

sion of the gospel, had begun to slacken, they became weary of interfering in such matters; and as they gradually lost their privilege by disuse, the business remained entirely in the hands of the former. When a number of churches were afterwards united in one diocese, the clergy of that latter district, under the authority of the bishop, exercised a jurisdiction of a like nature over the whole of the inhabitants. In the meetings that were called, however, for this purpose, after the introduction of wealth had produced very different degrees of rank among churchmen, the parochial, or inferior clergy, were by degrees overlooked, or endeavoured to excuse themselves from attendance; and the care of maintaining ecclesiastical discipline, throughout the diocese, was appropriated to the bishop and clergy of his cathedral church. This diocesan court, which, from a perfect uniformity of circumstances, was formed upon the same plan in every diocese of the kingdom, was every where liable to the review of a similar court, in a still more extensive district, convened by the archbishop; and from the decrees of this last, at a period when the papal authority had

arrived at its height, there lay an appeal to the Roman pontiff.

Together with this judicial authority, which was properly of a spiritual nature, the Christian clergy came also to be invested with a temporal jurisdiction. After the Christian religion was taken under the protection of the Roman government, and after the fashion of making donations to the church, for pious uses, had become prevalent, the dignified clergy, both secular and regular, as has been formerly mentioned, were enabled to acquire great landed estates. These, upon the settlement of the Gothic nations in the western part of Europe, were gradually reduced under the same feudal policy that obtained in the landed property of the lay-barons; and a great proportion of the lands of every bishop, or abbot, was commonly distributed among his villeins or vassals; over whom he exercised the jurisdiction and authority of a temporal lord and superior. The estate, or benefice, which from the piety of well-disposed persons, or from whatever cause, had been mortified to the church, and had come into the hands of some particular church-

man, was afterwards, in like manner as happened to the other fiefs of the kingdom, increased by the voluntary submission of neighbouring small proprietors; who, in order to purchase his protection, resigned their allodial property, and became his vassals. As the dignified ecclesiastics were not only possessed of a degree of influence corresponding to the extent of their benefices, but were supported by the spiritual arm of the church, they were often better qualified than many of the nobles, to secure their dependants from oppression; and of consequence the opportunities of augmenting their wealth, by an artful interposition in behalf of the inferior people, were proportionably more frequent.

In those circumstances, a bishop came to be invested with a civil as well as an ecclesiastical jurisdiction; the one extending to the people who lived upon his own estate; the other to all the inhabitants of his diocese. By virtue of the former, he punished the crimes, and determined the pecuniary differences of his tenants and vassals. In consequence of the latter, he enquired into the opinions and be-

haviour of such as were under his direction in religious matters; and censured them, either for heresy or immorality.

It required no great penetration to discover, that this temporal jurisdiction of the bishop might be extended, under cover of the spiritual jurisdiction. Every crime; every transgression of a rule of justice, whether of a public or private nature, may be considered as a sin, or as an offence in the sight of God; and in that view it might, consistently with the system of church-discipline, become an object of ecclesiastical censure. Whatever, therefore, could be the ground of an action before the civil magistrate, might be brought, at the same time, under the cognizance of the spiritual judge. The professed purpose of the former was, indeed, very different from that of the latter, who pretended to act merely with the view of promoting the good of the party in a future world. But when the church had acquired great authority over the people, it was not difficult for the ecclesiastical judge to frame his sentences in such a manner as to affect also the interest of men in the present life. In making atonement for a sin, the

offender might be ordained to indemnify the injured person, or even to submit to a public punishment.

This extension of ecclesiastical jurisdiction was made with greater or less rapidity, in different parts of Christendom, and with regard to persons or causes of different descriptions. It began with regard to the clergy themselves.

To maintain the dignity and credit of the church, it was necessary that she should pay the utmost attention to the behaviour of her own members, and be careful to avoid scandal, by censuring their offences with impartiality and rigour. She found, at the same time, the least difficulty in compelling churchmen to obey her decrees; for, as soon as the Christian Church had come to be established by law, the excommunication of a clergyman must have inferred a forfeiture of his benefice; since a person, who had been cast out of the society of Christians, could not consistently be permitted to hold any ecclesiastical dignity or employment. From the severe discipline, which the church exercised over her own members, it became customary to exhibit com-

plaints against them before the ecclesiastical, rather than before the civil judge, and to prosecute them in the church court, either for private debts, or for public offences.

After this practice had become general, it was regarded by churchmen as a matter of privilege. The peculiar functions and character of a clergyman required a peculiar delicacy, it was pretended, in judging of his conduct, which could not with propriety fall under the cognizance of the civil magistrate, and of which the clergy themselves were the only competent judges. In the progress of church power, this exemption from the jurisdiction of temporal courts was gradually established through the greater part of Christendom. It was introduced in the diocese of Rome by a law of Alaric, which provided that the clergy of that district should only be prosecuted, in the first instance, before their own bishop; but from his decision an appeal was admitted to the civil magistrate. In the Eastern empire, the inferior clergy obtained a similar privilege, in civil actions, by a law of the emperor Justinian; though, in criminal causes, not properly ecclesiastical,

they might still be prosecuted either in the spiritual or temporal court. The higher orders of churchmen, however, together with nuns, were, by the regulation of this emperor, permitted, in all cases, to decline the jurisdiction of laic judges*.

When the exemption of the clergy from the jurisdiction of the civil magistrate, which, with the exception of a few causes, became universal in the Western part of Europe, had been completely established, the church was, in reality, independent of the state; since, whatever regulations were enacted by the legislature of any country, they might, with safety, be disregarded by churchmen, who could not be punished for the violation of any law, unless they thought proper to enforce it by their own courts†.

The power of the church, in the administration of justice to her own members, was followed by a similar jurisdiction over the laity, in those law-suits by which her own

* V. Nov. 83.—123.—79. Also Gianone, Hist. of Naples.

† There were certain great crimes, such as high treason, and sacrilege, to which this exemption did not extend.

interest might, in any degree, be affected, or which appeared, however indirectly, to have an influence upon any ecclesiastical matter. But, in England, this encroachment upon the province of the civil magistrate was posterior to the Norman conquest; and therefore does not fall under our present consideration. During the government of the Anglo-Saxon princes, the clergy did not claim a separate cognizance in the temporal causes of the laity; but they laid the foundation of such a claim, in a future period, by assuming a privilege of assisting the ordinary magistrates in the determination of such causes. The extent of a diocese being the same with that of a shire, the bishop sat along with the earl or sheriff, as a judge, in the county courts; and the rural dean, whose ecclesiastical district coincided with the hundred, appears, in like manner, to have been associated with the *centenarius*, in the determination of such differences as arose among the people of that division. It is not improbable that the union of the civil and ecclesiastical powers was carried still lower, and that the parson of a parish was accustomed to judge along with the tythingman, in the

court of the decennary: this is what might be expected from the correspondence between the limits of a parish and a tything, and from the analogous practice in the superior courts; though the accounts transmitted by early historians are too vague and general to afford any positive evidence of the fact.

This arrangement of the Saxon tribunals was a natural consequence of the influence possessed by the spiritual and the temporal governors, in the territories over which they presided. It seems, at the same time, to have been esteemed a wise regulation; in as much as by uniting the opinion of those two officers, in the distribution of justice, it was likely that the decisions would be tempered in such a manner, as might correspond to the interest, and the views, of every set of men in the community. The experience and foresight of that age was too limited to discover the inconveniency of confounding the plain and accurate rules of justice, with the intricate subtleties of casuistry, which naturally introduce themselves into the judgments of a spiritual director: not to mention the danger of committing a share of the judicial power, in those

times of ignorance, to a set of men, who, by their superior education, were likely to be an over-match for the civil magistrate, and who, by their situation, having acquired a separate interest, were led to seek their own aggrandizement at the expence of the great body of the people.

CHAPTER XIV.

Alterations in the State of the Wittenagemote.

THE progressive changes in the state of property, and in the constitution and circumstances of the people, of which an account has been given, must have contributed, in many particulars, to alter the constitution and procedure of the Wittenagemote. As this national counsel was composed of all the allodial proprietors of land, whose estates, according to the primitive distribution of property, were generally of small extent, there can be no doubt that, upon the union of the different kingdoms of the Heptarchy, it formed a very numerous, and, in some degree, a tumultuary meeting. The measures which came under its deliberation were proposed, it should seem, by such of its members as were distinguished by their influence or abilities; and its determinations were signified, not by collecting exactly the number of suffrages, but by a promiscuous acclamation, in which the

by-standers, it is not unlikely, were accustomed frequently to join with those who had the right of voting. This, in all probability, is what is meant by the early historians, when they speak of the *people* being present in the ancient Wittenagemote, and of their *assisting*, and *giving their consent*, in forming the resolutions of that assembly.

It cannot escape observation, that this early constitution of the national council, while it contained a mixture of democracy and aristocracy, was, in some respects, favourable also to the interests of the crown. In so numerous and disorderly an assembly, there was great room for address, in managing parties, and in conducting the subjects of public deliberation; so that the king, the chief executive officer, had many opportunities of promoting the success of a favourite plan, as well as of parrying, and removing out of sight, those measures which were disagreeable to him.

The frequent resignations of land which, during the progress of the Saxon government, were made by the small allodial proprietors, in order to shelter themselves under the protection of a feudal superior, necessarily withdrew those

individuals from the Wittenagemote; and reduced them under the jurisdiction and authority of that particular thane whom they had chosen for their protector. As they became his military servants, they were bound, on every occasion, to espouse his quarrel, and to follow his banner. They were bound, at the same time, to attend his baron-court, and to assist in deciding causes, as well as in making regulations, with regard to his vassals. In consistency with that subordinate station, they could not be permitted to sit in the same council with their liege lord, to deliberate with him upon public affairs; but, on the contrary, were understood to be represented in the Wittenagemote by the person who had undertaken to protect them, and to whom they owed submission and obedience.

Thus, according as the vassals of the nobility, throughout the kingdom, were multiplied, the constituent members of the Wittenagemote became less numerous; and the right of sitting in that assembly was more and more limited, to a few opulent barons, who had acquired the property of extensive districts,

and reduced the inhabitants under their dominion.

This change of circumstances was no less unfavourable to the king, on the one hand, than it was, on the other, to the great body of the people. For although the vassals of the crown were, by the gradual resignations of allodial property, increased in the same, or even in a greater proportion than those of particular noblemen, the sovereign was not thence enabled to preserve his former weight in the determination of public measures. The more the national council had been reduced to a small junto of nobles, it was the more difficult to impose upon them, or by any stratagem to divert them from prosecuting their own views of interest or ambition. By the accidental combination of different leaders, they sometimes collected a force which nothing could resist; and were in a condition, not only to defend their own privileges, but even to invade the prerogative. It was often vain for the sovereign, in such a situation, to appeal to the sword from the decisions of the Wittenagemote. Those haughty and ambitious subjects were generally prepared for

such a determination; and, as they came into the assembly, supported by their vassals, armed and ready to take the field, they got frequently the start of his majesty. To give way, therefore, to their demands, and to wait for some future opportunity of recovering what had been yielded, was in many cases unavoidable.

In that early period of the Anglo-Saxon state, when the allodial proprietors were numerous, and when their estates were generally small, they were understood to be all of the same rank and condition. Although some persons might be distinguished above others, by their abilities, or military reputation, the superiority derived from thence, being accidental and temporary, was not productive of any permanent authority or privileges. But when, from the causes which had been mentioned, a few great lords had become masters of an extensive landed property, their exaltation in power and dignity was a necessary consequence. Those individuals, on the contrary, who remained in the possession of small estates, though by any fortunate concurrence of events they had been enabled to retain their independence, were degraded in proportion to

their poverty. They could maintain but few retainers to support their influence. Hardly in a condition to defend themselves, and afraid of every contest which might endanger their property, and their personal safety, they were deterred from claiming political consideration, and from interfering in public business. It was their interest to live upon good terms with their neighbours, and, by their peaceable and inoffensive behaviour, to shun every ground of jealousy and resentment. If they came into the Wittenagemote, their voice was but little heard; or if they ventured to differ from others of greater opulence, it was likely to be treated with neglect, or with derision. They had but small encouragement, therefore, to attend the meetings of that assembly; where, at the same time that they incurred an expence not suited to their fortunes, they were subjected to continual mortification, and were incapable of procuring respect. In these circumstances, it is probable that the allodial proprietors, whose estates were inconsiderable, appeared but seldom in the Wittenagemote; and that, unless upon extraordinary occasions, when great unanimity was of the highest importance,

their absence was either dispensed with, or in a great measure overlooked.

It was to be expected that this very unequal distribution of property, as it produced a real difference in the consideration and importance of individuals, would come at length to be accompanied with corresponding marks of distinction; and that so much wealth as enabled the possessor to live according to a certain standard of magnificence, might become the foundation of suitable dignity. Thus, in the latter part of the Anglo-Saxon government, such of the nobles as enjoyed an estate, extending to forty hides of land, were distinguished in rank and condition from those who possessed an inferior property. This appears from a passage in the register of Ely, in which mention is made of a person who, "though he "was a *nobleman*, could not be numbered "among the *proceres*, because his estate did not "amount to forty hides of land*."

* Habuit enim (speaking of the abbot of Ely) fratrem *Cudmundum* vocabulo, cui filiam præpotentis viri in matrimonium conjungi paraverat. Sed quoniam ille quadraginta *hidarum* terræ dominium minime obtineret, licet *nobilis* esset, inter *proceres* tunc numerari non potuit; eum puella repudiavit. Historia Eliensis, lib. ii. cap. 40.

From this passage, political writers have been led to advance two conjectures, to which it gives no countenance whatever. They consider the rank or privileges, attached to the possession of forty hides of land, as having existed from the original settlement of the Anglo-Saxons; although the writer of that passage speaks only, and that, by the by, of what was established in the reign of Edward the confessor. They also maintain, that persons whose estates were below forty hides of land, were entirely excluded from the right of sitting in the Wittenagemote. But the passage referred to makes no mention of the right of sitting in the Wittenagemote, nor gives the least hint concerning it; but only points out the extent of property which entitled a person to be ranked among the *proceres*. There is no reason to believe, either from this, or from any other ancient author, that, even in the latter part of the Anglo-Saxon government, the proprietors of such great estates were the only members of the national assembly; though it is, no doubt, highly probable, that they would be more apt, than persons of a lower station, to give a punctual attendance upon its meetings,

The superior dignity, however, enjoyed, in the reign of Edward the confessor, by such of the nobility as were possessed of a certain extent of property, is the more worthy of attention, as it became still more remarkable after the Norman conquest, and laid the foundation of that noted distinction between the *greater* or *smaller* barons, which was productive of important changes in the constitution.

As the Wittenagemote was diminished by the reduction of many allodial proprietors into a state of vassalage; it may be questioned whether it did not, on the other hand, receive a gradual supply of new members, by the advancement of the *churles*, who, in consequence of the law of king Athelstane, were, upon the acquisition of five hides of land, admitted to the privileges of a thane. Concerning this point the following observations will occur. 1st. That though many of the peasants appear in the latter periods of the Anglo-Saxon government, to have become free, and even opulent, it is probable that they held their possessions upon the footing of vassalage, rather than of allodial property; in consequence of which, they could only be ranked, from the

law above-mentioned, among the *lesser thanes*, who had no right of sitting in the Wittenagemote: 2dly, Supposing that any of these churles acquired allodial estates, and that they were strictly entitled to a voice in the Wittenagemote; yet, about the time when this privilege was bestowed, a much greater property than five hides of land, the quantity specified in the law of king Athelstane, was required for giving the proprietor any weight or consideration in that assembly, or for making his attendance upon it a desirable object. This was a privilege, therefore, which they would be more apt to decline from its inconveniencies, than to exercise, or to boast of, on account of its advantages.

It may also be a question, whether those merchants who performed three voyages into a foreign country, and who, by another law of the same prince, are said to have obtained the rights of a *thane*, were admitted into the Wittenagemote. But, as these mercantile adventurers were not required to possess any estate, real or personal, it is not reasonable to suppose that they could be allowed to participate, with the ancient nobility, in the delibe-

rations of the supreme national council. It has already been observed, that by the privileges of a thane, bestowed as an encouragement to a certain degree of enterprize in trade, were probably understood those of a *lesser thane*, or vassal; who, though not a member of the Wittenagemote, was of a condition greatly superior to that of the original peasants and mechanics.

As it does not appear that individuals among the merchants had, independent of any landed estate, the privilege of sitting in the Wittenagemote; so there is no evidence that, collectively, the trading interest were, even in the latter part of the Anglo-Saxon history, entitled to send representatives to that assembly. Of this we may be satisfied from the particulars, relative to the constitution of the national council, which have been formerly mentioned. The facts which were then adduced, in order to shew that in the Saxon Wittenagemote there were no representatives, either from towns, or from the small proprietors of land, appear conclusive with regard to the whole period of the English government before the Norman conquest. If the

original constitution of that assembly admitted of no representatives from either of those two classes of men, it must be supposed, that the subsequent introduction of them, more especially if it had happened near the end of the Saxon period, when historical events are better ascertained, would have excited the attention of some historian or other, and have been thought worthy of transmission to future ages. But upon this point, of so much importance in the political system, and so unlikely to pass without notice, the later as well as the early Saxon historians are entirely silent.

The advancement of arts and manufactures, towards the end of the Saxon line, was, indeed, so considerable, as to have enlarged particular towns, and to have exempted the inhabitants from those precarious duties and services to which they had anciently been subjected. They were permitted to form *societies*, or *gilds*, for the benefit of their trade; which appear to have at length suggested the practice of incorporating the whole of a town with particular privileges and regulations*. By a series of progressive improvements, the trading peo-

* Madox firma burgi.

ple were thus gradually prepared and qualified for that political consideration which they afterwards acquired by the establishment of representatives in the national council. But the acquisition of this important privilege was the work of a later period, when they rose to a higher pitch of opulence and independence.

The original meetings of the Wittenagemote in England, as well as those of the national council, in most of the kingdoms upon the neighbouring continent, appear, as was formerly observed, to have been held regularly at two seasons of the year; at the end of spring, for deliberating upon the military operations of the summer, and at the beginning of autumn, for dividing the fruit of those depredations. The same times of meeting were, for similar reasons, observed, in the courts belonging to the several shires and baronies of the kingdom. But as, in England, from her insular situation, military enterprises against a foreign enemy were less regular than upon the continent of Europe, those meetings fell soon into disuse; and as, on certain great festivals, the king was accustomed to appear, with great pomp and solemnity, among his

nobles; it was found convenient, on those occasions, to call the Wittenagemote. Hence the meetings of that council came to be held uniformly at three different seasons; at Christmas, at Easter, and at Whitsuntide.

The increase of the national business, particularly with respect to the distribution of justice, a consequence of the gradual progress of authority in the public, made it necessary that the Wittenagemote should be held more frequently than in former times; and therefore, in any extraordinary exigence, which arose between the different festivals above mentioned, a particular meeting of that council was called by the king. Thus there came to be two sorts of Wittenagemote; the one held by custom, and at three stated periods; the other called occasionally, by a special summons from the king*. Both were composed of the same persons, if they chose to attend; but commonly a much less regular attendance was given in the latter than in the former. At the occasional meetings of the great council, such of the nobility as lived at a distance were seldom

* The former were called *courts de more*, being founded upon immemorial custom.

at the trouble of appearing; and the business, of course, devolved upon those members who happened to be in the king's retinue, and who might be said to compose his privy-council.

For this reason, the occasional meetings of the Wittenagemote usually confined themselves to matters of less importance than were discussed in the old customary meetings. The chief employment of the former was the hearing of appeals from inferior courts: but legislation, and other weighty transactions, were generally reserved to the latter.

If, however, it was found necessary, in the interval between the three great festivals, to deliberate upon public business of importance, the king issued an extraordinary summons to his nobles; in which he expressly required their attendance, and specified the cause of their meeting*.

It may here be proper to remark, that the smaller occasional meetings of the Wittenagemote appear to have suggested the idea of the *aula regis;* a separate court, which, after the Norman conquest, was formed out of parliament for the sole purpose of deciding law-suits.

* Gurdon's History of the high court of Parliament.

As the occurrences which demanded the immediate interposition of the Wittenagemote could not be foreseen, the king was led to determine the particular cases in which the deliberation of that assembly was requisite; and in the exercise of this prerogative, he was originally under no restraint. The powers exercised by the crown seem, at first, to have been all discretionary; and to have remained without limitation, until experience had shewn the danger of their being abused.

We shall afterwards have occasion to observe, that, under the princes of the Norman and Plantagenet race, the ancient and regular meetings of the national council were more and more disregarded, and at length entirely disused; in consequence of which the whole parliamentary business came to be transacted in extraordinary meetings, which were called at the pleasure of the sovereign. The attempts to limit this important branch of the royal prerogative will be the subject of future discussion.

Conclusion of the Saxon Period.

SUCH appear to be the outlines of the English government under the administration

of the Anglo-Saxon princes. To the subjects of Britain, who consider the nature of their present constitution, and compare it with that of most of the nations upon the neighbouring continent, it seems natural to indulge a prepossession, that circumstances peculiarly fortunate must have concurred in laying the foundation of so excellent a fabric. It seems natural to imagine, that the government of the Anglo-Saxons must have contained a proportion of liberty as much greater than that of the neighbouring nations, as our constitution is at present more free than the other European governments.

When we examine, at the same time, the state of our country, in that remote age; the uniform jurisdiction and authority possessed by every allodial proprietor; the division of the country into various districts, subordinate one to another; the perfect correspondence between the civil and ecclesiastical divisions; the similarity in the powers exercised by the meetings of the tything, the hundred, and the shire, in their respective territories, and those of the Wittenagemote over the whole kingdom; the analogy between the office of the tythingman, the hundreder, and the earl, in

their inferior departments, and that of the sovereign in his more exalted station; when, I say, we examine these, and other particulars relating to the Anglo-Saxon government, in which we may discover so much order and regularity, such a variety of regulations, nicely adjusted to one another, and calculated for the most beneficial purposes; it is natural to suppose, that the whole has originated in much contrivance and foresight; and is the result of deep-laid schemes of policy.

In both of these conclusions, however, we should undoubtedly be mistaken. When we look round and examine the state of the other European kingdoms about the same period; and when we observe, in each of them, the close and minute resemblance of its political system to that of England, how little soever the apparent intercourse of the inhabitants; we feel ourselves under the necessity of abandoning our former supposition, and of acknowledging that the regulations established in all of these countries proceeded from no artificial or complicated plans of legislation; but were such as occurred successively to the people, for the supply of their immediate wants, and the removal of inci-

dental inconveniencies; in a word, every where, a kind of natural growth, produced by the peculiar situation and circumstances of the society.

Neither was the Anglo-Saxon government calculated, in any peculiar manner, to secure the liberty and the natural rights of mankind. The sovereign, indeed, in the long period during which this government subsisted, and through all the successive alterations which it underwent, was at no time invested with absolute power. The supreme authority in the state was originally possessed by a numerous body of landed proprietors; but the rest of the community were either slaves, or tenants at the will of their master. The number of those who enjoyed a share in the government was afterwards greatly diminished: at the same time that, upon this advancement of the aristocracy, the lower part of the inhabitants became somewhat more free and independent. The increase of political power in men of a superior class was thus compensated by some little extension of privileges in the great body of the people.

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